FILE COPY

SUPREME COURT, U.S.
FILED
MAR 17 1961
JAMES R. BROWNING, Clerk

Supreme Court of the United States

OCTOBER TERM, 1960.

No. 825

ALATEX CONSTRUCTION SERVICE, INC.,
COMMUNITY FINANCE SERVICE, INC.,
PUBLIC DISCOUNT COMPANY, INC.,
Appellants.

versus

ERNEST CRAWFORD,
Appellee,

(CONSOLIDATED CASES.)

On Appeal from the Court of Appeal, Fourth Circuit, State of Louisiana.

JURISDICTIONAL STATEMENT.

DUFOUR, ST. PAUL, LEVY & MARX,
EDWIN F. MARX,
WILLIAM M. LUCAS, JR.,
1006 National Bank of Commerce Building,
New Orleans 12, Louisiana,
Attorneys for Alatex Construction Service, Inc.,
OWENS, LEVY & VOELKER,
RICHARD L. VOELKER, JR.,
401 National Bank of Commerce Building,
New Orleans 12, Louisiana,
Attorneys for Public Discount Company, Inc.,
LENFANT & VILLERE,
HOWARD W. LENFANT,
910 Richards Building,
New Orleans 12, Louisiana,
Attorneys for Community Finance Service, Inc.

INDEX.

	Page
OPINIONS BELOW	2
JURISDICTION	3
STATUTES INVOLVED	5
QUESTIONS PRESENTED	6
STATEMENT OF THE CASE	7
THE FEDERAL QUESTION IS SUBSTANTIAL	16
APPENDIX A:	
Opinion—Crawford v. Alatex Construction Service, Inc.	18
APPENDIX B:	
Opinion—Crawford v. Community Finance Service, Inc.	40
APPENDIX C:	
Opinion—Crawford v. Public Discount Co. Inc.	42
APPENDIX D:	
Denial of Application for Writs of Certiorari and Review by the Louisiana Supreme Court	44
(1) Alatex Construction Service, Inc.	44
(2) Community Finance Service, Inc.	45
(3) Public Discount Company, Inc.	46
APPENDIX E:	
Certificate of Consideration of Federal Question by Court of Appeal, Fourth Circuit, State of Louisiana	47

CASES CITED

	Page
American Ry. Express Co. v. Levee, 263 U.S. 19, 44 S. Ct. 11, 12	4, 9
Case v. Bowles, 327 U.S. 92, 66 S. Ct. 438	13
Charleston Federal Savings and Loan Ass'n v. Alderson, 324 U.S. 182, 65 S. Ct. 624	5
Crawford v. Alatex Construction Service, Inc., 120 So.(2d) 845	2
Crawford v. Community Finance Service, Inc., 120 So. (2d) 854	2
Crawford v. Public Discount Co., Inc., 120 So. (2d) 855	2
Honeyman v. Hanan, 300 U.S. 14, 57 S. Ct. 350	5
James Stewart & Co. v. Sadrakula, 309 U.S. 94, 60 S. Ct. 431	5
Legal Tender Cases, 79 U.S. 457, 545; 12 Wall. 457, 553	12
Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157, 74 S. Ct. 396	4
Miller v. Race, 1 Burrow 452, 457; 97 Eng. Rep. 398	16
Norman v. Baltimore & O. R. Co., 294 U.S. 240, 55 S. Ct. 407	12
Reconstruction Finance Corp. v. Beaver County, Pa., 328 U.S. 204, 66 S. Ct. 992	16

CONSTITUTIONAL PROVISIONS CITED

United States Constitution:	
Article VI, Clause 2	13
Louisiana Constitution:	
Article 7, Section 10	8
Article 7, Section 11	8
Article 7, Section 20	1
Article 7, Section 21	1

CONSTITUTIONAL PROVISIONS CITED—Continued:
Louisiana Constitution—(Continued):

Page

Article 7, Section 29 9
Article 7, Section 78 9

RULES OF THE UNITED STATES SUPREME COURT.

Rule 15(3) 2

STATUTES CITED.

United States Statutes:
28 U.S.C. 1257(2) 3
28 U.S.C. 2101(c) 4
31 U.S.C. 462 ..... 4, 6, 7, 11, 12, 14, 16, 17

Louisiana Statutes:
L.S.A.-R.S. 7:195 15

LOUISIANA CIVIL CODE ARTICLES.

Article 2139 ..... 5, 6, 7, 9, 10

LAW REVIEW ARTICLES AND GENERAL AUTHORITIES.

7 American Jurisprudence, 909 Verbo Treasury Notes 14
Boston College Industrial and Commercial Law Review, Vol. II, No. 1, Fall 1960 12
80 Corpus Juris Secundum 1292 Verbo Signatures .. 15

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1960.

No. .....

ALATEX CONSTRUCTION SERVICE, INC.,
COMMUNITY FINANCE SERVICE, INC.,
PUBLIC DISCOUNT COMPANY, INC.,
Appellants.

versus

ERNEST CRAWFORD,
Appellee,

(CONSOLIDATED CASES.)

On Appeal from the Court of Appeal, Fourth Circuit, State of Louisiana.

JURISDICTIONAL STATEMENT.

May It Please The Court:

Appellants appeal from the several Judgments of the Court of Appeal, Fourth Circuit, State of Louisiana, (formerly Court of Appeal, Parish of Orleans—Louisiana Constitution Article 7 Sec. 20, 21 effective Jan. 1, 1961)

entered on November 30, 1959, as affirmed on Rehearing by the Court of Appeal, Fourth Circuit, by Judgments entered on June 8, 1960. Writs of Certiorari and Review were denied by the Supreme Court of the State of Louisiana, on October 5, 1960. The several cases were consolidated for trial in the trial and Appellate Courts of the State of Louisiana, and pursuant to Rule 15 (3) of the Rules of the Supreme Court of the United States a single Jurisdictional Statement is filed herewith covering all the said cases.

OPINIONS BELOW.

The Judgment of the First City Court for the City of New Orleans (the Court of original jurisdiction) is not reported. The opinions of the Court of Appeal for the Parish of Orleans, Louisiana on original Hearing and on Rehearing in the case of *Ernest Crawford vs. Alatex Construction Service, Inc.*, is reported in 120 So. (2) 845 (Appendix A *infra*, Page 18). The opinion on original Hearing and on Rehearing in the case of *Ernest Crawford vs. Community Finance Service, Inc.*, is reported in 120 So. (2) 854 (Appendix B, *infra* Page 40). The opinion on original Hearing and on Rehearing in the case of *Ernest Crawford vs. Public Discount Co.; Inc.*, is reported in 120 So. (2) 855 (Appendix C, *infra* Page 42). All original Opinions were entered November 30, 1959, and all Opinions on Rehearing were entered June 8, 1960.

Appellants herein applied to the Supreme Court of the State of Louisiana for Writs of Certiorari and Review,

which were denied on October 5, 1960 (Appendix D, *infra* Page 44).

The Trial Court rendered no written opinion.

JURISDICTION.

The original Opinion of the Court of Appeal for the Parish of Orleans, Louisiana, was rendered in each of the consolidated cases on November 30, 1959. The Opinion on Rehearing of the Court of Appeal for the Parish of Orleans, Louisiana, was rendered in each of the consolidated cases on June 8, 1960. Petition for Writs of Certiorari and Review filed by each of the Appellants herein with the Supreme Court of the State of Louisiana were denied on October 5, 1960. Notice of Appeal to this Court on behalf of Appellants was filed with the Court of Appeal for the Parish of Orleans, Louisiana, on December 23, 1960. Motion and Order enlarging the time for the docketing of these consolidated cases in the United States Supreme Court until March 21, 1961 was signed by the Court of Appeal for the Parish of Orleans, Louisiana, on February 8, 1961.

The jurisdiction of this Honorable Court to review the decision by direct appeal is conferred by 28 U.S.C. 1257 (2) (June 25, 1948, c. 646, 62 Stat. 929).

That the appeals in the instant cases lie properly from the Court of Appeal for the Parish of Orleans, Louisiana where the Supreme Court of Louisiana has refused Writs of Certiorari and Review to the State Court of Appeal

"for the reason that the Judgment is correct" is supported by the decisions of this Honorable Court in *Michigan-Wisconsin Pipe Line Co. vs. Calvert*, 347 U.S. 157, 74 S. Ct. 396 and *American Ry. Express Co. vs. Levee*, 263 U.S. 19, 44 S. Ct. 11, 12. As further indicated in *American Ry. Express Co. vs. Levee*, *supra*, the limit of time for applying to the Supreme Court of the United States was from the date when the Writ of Certiorari was refused (263 U.S. at pages 20-21, 44 S. Ct. at page 12). Writs of Certiorari and Review were denied by the Supreme Court of the State of Louisiana on October 5, 1960; and accordingly, pursuant to 28 U.S.C. 2101 (c) (June 25, 1948 c. 646, 62 Stat. 961; May 24, 1949, c. 139, § 106, 63 Stat. 104). Notice of Appeal was timely filed with the Court of Appeal for the Parish of Orleans, Louisiana within ninety (90) days from October 5, 1960, to-wit: on December 23, 1960.

The Court of Appeal, Fourth Circuit, in its original opinions and its opinions on rehearing specifically held that United States Currency does not contain the essence of negotiable instruments and recognized that this federal question was raised by Defendants. The Court thus implicitly held that United States Currency is not legal tender in just payment of all debts, public and private, 31 U.S.C. 462 to the contrary notwithstanding.

In addition the Honorable George Janvier, Presiding Judge of the Court of Appeal, Fourth Circuit, State of Louisiana has executed a "Certificate of Consideration of Federal Question" (Appendix E, *Infra* Page 45),

attesting to the fact that the Federal Question raised and argued before the Court of Appeal for the Parish of Orleans, was considered by the said Court, despite the fact that it was not adverted to in the decisions of the said Court. In the case of *Honeyman vs. Hanan,* 300 U.S. 14, 22; 57 S. Ct. 350, 353 this Honorable Court held:

> "Thus the true function of a certificate or statement of a state court, by way of amendment of, or addition to, the record, is to aid in the understanding of the record, to clarify it by defining the federal question with reasonable precision and by showing how the question was raised and decided, so that this Court upon the record as thus clarified may be able to see that the federal question was properly raised and was necessarily determined. Our decisions in cases where certificates have been found useful should be read in the light of that fundamental consideration. * * *"

This Honorable Court has frequently held that where it appears that a State Statute is drawn in question as repugnant to the Constitution, Laws or Statutes of the United States, and the decision of the Court was in favor of its validity, the United States Supreme Court has jurisdiction on appeal. *Charleston Federal Savings and Loan Ass'n. vs. Alderson,* 324 U.S. 182, 65 S. Ct. 624; *James Stewart & Co. vs. Sadrakula,* 309 U.S. 94, 60 S. Ct. 431.

STATUTES INVOLVED.

These proceedings were brought by Appellee under the provisions of Louisiana Civil Code Article 2139 which

appears in *West's L.S.A. Civil Code, Vol. 8, Article 2139,* as follows:

> "Art. 2139. Payment with stolen money or property
> Art. 2139. If money, or other stolen property, be given in payment, the payment is not good, and the owner may recover the amount paid."

Appellants have contended and here urge that Louisiana Civil Code Article 2139 is in conflict with *31 U.S.C. 462* (May 12, 1933, c.25, Title III, § 43 (b) (1), 48 Stat. 52; June 5, 1933 c. 48, § 2, 48 Stat. 113) which provides:

> "§ 462. Coins and currencies
> All coins and currencies of the United States (including Federal Reserve note and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight."

QUESTIONS PRESENTED.

(1) Whether the Court of Appeal for the Parish of Orleans, Louisiana failed to recognize that United States currency is legal tender for all debts, public and private, with the result that the Court's decision impairs the use of United States Currency in derogation of the Laws of the United States.

(2) Whether the Court of Appeal for the Parish of Orleans, Louisiana, reached improper and incorrect conclusions of law in support of its finding that the Negotiable Instruments Law of the State of Louisiana has no application to United States currency, despite the clear language of 31 USC 462 importing the highest degree of negotiability to United States currency.

STATEMENT OF THE CASE.

The respective actions filed by Appellee in the First City Court for the City of New Orleans were each dismissed by the Court on Exceptions of No Cause of Action, with no Judgment being rendered by the First City Court for the City of New Orleans on the merits.

The question of the conflict between Louisiana Civil Code Article 2139 and 31 U.S.C. 462 was accordingly not raised in the Lower Court and was presented for the first time in Briefs to the Court of Appeal for the Parish of Orleans. The Court of Appeal for the Parish of Orleans, in its original Opinion and in its Opinion on Rehearing, impliedly if not expressly adverted to the conflict between Louisiana Civil Code Article 2139 and 31 U.S.C. 462 by holding that United States Currency does not contain the essence of negotiable instruments. In addition a "Certificate of Consideration of Federal Question" was signed by the Honorable George Janvier, Presiding Judge of the Court of Appeal, Fourth Circuit, State of Louisiana (formerly Court of Appeal for the Parish of Orleans, State of Louisiana) (Appendix E. *infra*, Page 45), attesting to the fact that the Federal Question was re-

viewed and considered by the Court of Appeal for the Parish of Orleans; but the Court found that in its Opinion there was no conflict between the Louisiana Civil Code Article and the Federal Statute. It is thus submitted, that the Federal Question was timely raised, for the following reasons:

(1) That the first Court to rule on the merits of the case was the Court of Appeal for the Parish of Orleans, which reversed the Judgment of the Lower Court, dismissed the suits on Exceptions of No Cause of Action and rendered Judgment in favor of Plaintiff.

(2) That the Court of Appeal for the Parish of Orleans, Louisiana, by Certificate of its Presiding Judge has attested to the fact that the Federal Question presented was reviewed and considered, despite the fact that it is not referred to specifically in the Opinions of the Court.

(3) The conflict between the State Codal provision and the Federal Statute is apparent on its face and is inherent in the decisions.

The Briefs filed with the Court of Appeal for the Parish of Orleans, support the fact that the Federal Question was raised.

Under the Constitution of the State of Louisiana, the jurisdiction of the Supreme Court of the State of Louisiana was supervisory (Louisiana Constitution Article 7 Secs. 10, 11). The Court of Appeal for the Parish of Orleans, Louisiana, was thus, the Court of last resort

(Louisiana Constitution Article 7 Sec. 78—since superceded by Louisiana Constitution Article 7 § 29 effective Jan. 1, 1961) except for the necessity of Appellants invoking the supervisory jurisdiction of the Louisiana Supreme Court by applying for Writs of Certiorari and Review. Once the jurisdiction was declined, the Court of Appeal for the Parish of Orleans, Louisiana, was shown to be the highest Court of the State in which a decision could be had. In this connection, the Court's attention is directed to its decision authored by Mr. Justice Holmes in *American Ry. Express Co. vs. Levee, supra*, page 4, in which Justice Holmes analyzed a similar appellate situation in a case from the State of Louisiana.

Appellee brought suit against the Defendants to recover various sums which were paid to the Appellants by one Sam Davis to cover the balance due by Davis on pre-existing debts (Alatex Construction Service, Inc., $300.00; Community Finance Service, Inc., $486.50; Public Discount Company, Inc., $551.00). Appellee alleged that the payments were made by Davis with money stolen from Appellee (Ernest Crawford), and that, accordingly, Appellants were obliged to reimburse Appellee, pursuant to the provisions of Louisiana Civil Code Article 2139.

It was stipulated between Counsel for all parties at Transcript of Testimony, page 3, as follows:

> "It is further stipulated between Counsel for all parties that all Defendants received payments made to them by Sam Davis in good faith, without knowing of any defects as to title to the money or otherwise,

and that the payments were made and accepted in the normal course of business."

Plaintiff, who admitted that he and one Ophelia Johnson, were living together as husband and wife, claimed that the said Ophelia Johnson "stole" from a locked cedar robe a sum approximating $20,000.00. It was freely admitted by Appellee that the cedar robe was located in the home jointly occupied by Appellee and the said Ophelia Johnson, and where they were living as husband and wife (Transcript of Testimony, pages 5-7). Appellee took the position that he always kept the cedar robe locked and always kept the key to the cedar robe in his wallet, and that Ophelia Johnson apparently took the key from his wallet, and on July 8, 1954, stole the money from his cedar robe (Transcript of Testimony, pages 7-9).

Appellee further claimed that Ophelia Johnson turned over some of the stolen money to Sam Davis, with whom the said Ophelia Johnson had also been living. It was Sam Davis who made the payments to the Appellants herein that form the subject matter of these suits.

Louisiana Civil Code Article 2139 provides as follows:

"R.C.C. 'Art. 2139. If money, or other stolen property, be given in payment, the payment is not good, and the owner may recover the amount paid.'"

It is pursuant to this Article that Judgment was rendered in favor of Appellee and against Appellants.

However, all currency of the United States Government has printed upon it the following: "This Certificate is Legal Tender for all Debts, Public or Private".

Also, at the bottom of every piece of United States currency the following words appear: "will pay to the order of bearer on demand" or "in silver, payable to the bearer on demand".

31 U.S.C. 462, provides:

"§ 462. Coins and currencies

All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight. May 12, 1933, c. 25, Title III, § 43 (b) (1), 48 Stat. 52; June 5, 1933, c. 48, § 2, 48 Stat. 113."

The decisions allowing recovery on the part of Appellee herein are tantamount to a judicial pronouncement that United States currency was not in these cases legal tender in payment of all debts, public and private; and insofar as good faith receivers of the stolen money were concerned, the United States Federal Reserve Notes and Silver Certificates were not "payable on demand to bearer"—all in contravention of the provisions of 31 U.S.C., Section 462.

31 U.S.C. 462 was enacted pursuant to the powers granted to Congress in Article I, Section 8 of the United States Constitution, wherein Congress was authorized:

"* * *

To coin money, regulate the Value thereof, and of foreign Coin, and fix the Standards of Weights and Measures * * *

* * *."

It is submitted that the status of Federal currency is a matter exclusively within the control of the Federal Government, and that the states are powerless to enact legislation limiting the exchangeability of currency. 31 U.S.C. 462; *Legal Tender Cases* 79 U.S. 457, 545, 12 Wall. 457, 553 *Norman vs. Baltimore and O. R. Co.*, 294 U.S. 240, 55 S. Ct. 407.

The Court's attention is also directed to a Case Note appearing in a recent edition of the *Boston College Industrial and Commercial Law Review*, Vol. II, No. 1, Fall, 1960, at page 159, entitled "Currency-Negotiable Instruments Law-Recovery of Funds from Transferee of Thief—Crawford vs. Alatex Construction Service, Inc.". This Case Note reviews the cases that are now presented to this Court for its consideration and analyzes the impact of the decision of the Court of Appeal, Fourth Circuit, State of Louisiana, on United States currency in derogation of and in conflict with both the Statutes of the United States and the Negotiable Instruments Law.

It is the well settled law of this Nation that when the Congress of the United States has passed Legislation authorized by its granted powers and where at the same time a State has a conflicting law, the Federal Legislation shall be the supreme law of the land. Article VI, Clause 2 of the United States Constitution; *Case vs. Bowles*, 327 U.S. 92, 66 S. Ct. 438.

The Court of Appeal for the Parish of Orleans held in its original Opinion and reaffirmed in its Opinion on Rehearing as follows:

> "* * * We do not believe currency contains all the essence of a negotiable instrument under our law. We think United States currency is the object for which negotiable instruments issue. The very first requirement of our negotiable instrument law is that the instrument must be signed by the maker. The signatures on paper money are made by facsimile stamp, put there apparently by machinery. The adoption of the N.I.L. has not in effect repealed Article 2139 of the Civil Code".

The Court thus advances the novel principles that: (1) money cannot be a negotiable instrument because it is used in paying other negotiable instruments, and (2) money is not a negotiable instrument because it is not *signed* by the maker, since a *facsimile stamp* is used for the signatures.

The United States Government now prints three types of paper money:

(1) Federal Reserve Notes (with green seals and numbers);

(2) United States Notes (with red seals and numbers); and

(3) Silver Certificates (with blue seals and numbers).

It is submitted that all of these mediums of exchange are legal tender for all debts, public or private, as indicated by the provisions of 31 U.S.C. 462.

They are the very essence of a Note or Negotiable Instrument and to hold otherwise, is to impair the efficacy of United States currency. The Federal Reserve Note bears on its face the term "Federal Reserve *Note*" and all pieces of currency bear the words "will pay to bearer on demand", words which embody the fundamental terminologies of a Negotiable Instrument.

The Court is referred to 7 *Am. Jur. p. 909* Verbo Treasury Notes. The authors there state:

> "Treasury notes of the United States are deemed negotiable instruments, and their transferability is subject to the commercial law of other paper of that character."

What do these notes and Silver Certificates represent? Clearly, they represent the silver or the collateral securities in the form of notes, drafts, bills of exchange or gold certificates or direct obligations of

the United States, which stand behind them. It is submitted that negotiable instruments issue "for something of value" and that currency merely stands in the place of that "something of value", to-wit: silver or collateral securities in the form of notes, drafts, bills of exchange or gold certificates or direct obligations of the United States. It is a medium of exchange, legal tender, or in other words, a practical and convenient means of transferring that which is of value. Again it is submitted that United States currency in the form of Federal Reserve notes and United States notes or Silver Certificates are the essence of all negotiable instruments.

The Opinion of the Court of Appeal for the Parish of Orleans, to the effect that currency cannot be classified as a negotiable instrument "because it is not signed by the maker" is without merit since it has been universally recognized that in the absence of a Statute otherwise providing a signature may be affixed by writing by hand, by printing or by various other means. 80 C.J.S., page 1292, Verbo: Signatures. Indeed, most Bearer Bonds in circulation in the United States today bear facsimile signatures.

By Acts of 1904, No. 64, the Legislature of Louisiana enacted the Negotiable Instruments Law which exists to this day (Louisiana Statutes Annotated 7:1-7:195).

Louisiana Statutes Annotated 7:195 provides:

> "§ 195 Law Merchant to Govern Cases not Provided For
>
> In any case not provided for in this chapter the rules of the law merchant shall govern".

As indicated by the author in *Boston College Industrial and Commercial Law Review*, Vol. II, No. 1, Fall, 1960, at page 160, one of the basic concepts of the law merchant has been that money is rfeely exchangeable with the consequence that an owner has no cause of action against a good faith taker of stolen funds. *Miller vs. Race*, 1 Burrow 452, 457, 97 Eng. Rep. 398 (K.B. 1758).

The holding of the Court of Appeal for the Parish of Orleans, Louisiana, that United States currency is not a negotiable instrument within the meaning and intent of the Louisiana Negotiable Instruments Law has the effect of derogating from the Statutes and Laws of the United States which clearly indicate that United States currency is legal tender (and thus a Negotiable Instrument) in payment of all debts, public and private.

It is submitted that Louisiana Civil Code Article 2139 is in direct contravention of 31 U.S.C. 462, and that the Federal Statute should prevail.

THE FEDERAL QUESTION IS SUBSTANTIAL.

This appeal challenges the validity of a State Statute sustained by the highest Court of the State before which these cases could properly be brought and raises a substantial Federal Question. *Reconstruction Finance Corp. vs. Beaver County, Pa.*, 328 U.S. 204, 66 S. Ct. 992. The foundation of the economy of this Nation rests upon the free and unhampered negotiation and free exchange of United States currency. The Court of Appeal for the Parish of Orleans has placed a restriction

upon the free circulation and use of United States currency for the payment of all debts, public and private by decreeing that Louisiana Civil Code Article 2139 permits a person from whom money is stolen to recover it in the hands of a good faith receiver—all despite the existence of 31 U.S.C. 462, which provides that United States currency shall be legal tender in payment of all debts, public and private.

It is submitted that the Federal Question is substantial.

Respectfully submitted,

DUFOUR, ST. PAUL, LEVY & MARX,
EDWIN F. MARX,
WILLIAM M. LUCAS, JR.,
1006 National Bank of Commerce Building,
New Orleans 12, Louisiana,
Attorneys for Alatex Construction Service, Inc.,
OWENS, LEVY & VOELKER,
RICHARD L. VOELKER, JR.,
401 National Bank of Commerce Building,
New Orleans 12, Louisiana,
Attorneys for Public Discount Company, Inc.,
LENFANT & VILLERE,
HOWARD W. LENFANT,
910 Richards Building,
New Orleans 12, Louisiana,
Attorneys for Community Finance Service, Inc.

APPENDIX A.

ERNEST CRAWFORD,

v.

ALATEX CONSTRUCTION SERVICE, INC.

(Consolidated with No. 21245 and No. 21246.)

No. 21244.

Court of Appeal of Louisiana.

Orleans.

Nov. 30. 1959.

On Rehearing June 8, 1960.

(Reported at 120 So.(2d) 845.)

JOHNSON, Judge pro tem.

Plaintiff's petition in this case in the First City Court of New Orleans alleges that on or about July 21, 1954, one Sam Davis paid unto defendant $300, the amount in which he was in default upon a preexisting debt owed by him to defendant; that Sam Davis, alias Carl Williams, was without funds to make such payment and that the money with which the payment was made had been stolen from plaintiff by Sam Davis acting in concert and conspiracy with others. Defendant's answer admits that the payment in the amount and on

the date was made "on account of a debt owed by said Sam Davis to defendant". At the same time plaintiff filed two other suits on the exact same allegations but for different amounts. One is against Community Finance Service, Inc. to recover $486.50 and the other is against Public Discount Co., Inc. to recover $551. Counsel for each of these defendants admitted that Sam Davis made the payment but denied all other allegations. Counsel for defendant, Alatex Construction Service, Inc., on the day of the trial orally entered an exception of no cause of action. Counsel for defendant, Community Finance Service, Inc., filed exceptions of no right or cause of action with his answer, and counsel for Public Discount Co., Inc. filed exceptions of vagueness and of no right or cause of action with his answer. The three cases were consolidated for trial. All exceptions were referred to the merits. After trial on the merits, the trial court rendered separate judgment in each case sustaining the exception of no cause of action and dismissed plaintiff's suit. Plaintiff has appealed and the three cases were consolidated in this court for argument.

Ernest Crawford, plaintiff, was the only witness called to testify in person at the trial. In addition to Crawford's testimony counsel for plaintiff offered and filed in evidence four exhibits, to-wit: the depositions of Ophelia Lewis Johnson and Sam Davis (P-1); a stipulation by the attorneys for Ophelia Johnson and Sam Davis and Jack C. Benjamin, the Assistant United States Attorney for the Eastern District of Louisiana (P-2); a memorandum by Jack C. Benjamin, the Assist-

ant U. S. Attorney, filed in a criminal prosecution by the United States vs. Ophelia Johnson and Sam Davis (P-3); and a memorandum by the Circuit Judge for the County of Van Buren, State of Michigan, being the written reason for judgment in that court in a suit in that court by Ernest Crawford vs. Ophelia Lewis, Alias Ophelia Johnson, Alias Mamie Williams, and Sam Davis, Alias Carl Williams (P-4).

These four exhibits were offered and filed in evidence by agreement and stipulation of counsel for all defendants as to the authenticity of each document but without admitting the facts and law contained therein. Such an agreement and stipulation as to the authenticity of the documents relieved the party offering them in evidence of the necessity of calling witnesses to lay the proper foundation as to authenticity of the documents. There was no objection made by any counsel as to the materiality, and relevancy or the admissibility of the contents of the documents and the whole of each document is in evidence and furnishes a part of the transcript and record as fully as though the documents had been copied into the transcript by the court reporter. P-3 and P-4 consist mostly of argument rather than evidence. Counsel for defendant did not call any witnesses or offer any evidence.

The evidence discloses that plaintiff owned property which the City of New Orleans expropriated for a consideration of $18,000, of which amount plaintiff actually received in his attorney's office $17,500 in cash in seventeen $1,000 bills and $500 in smaller denomina-

tions; that plaintiff already possessed about $3,000 in cash; that he put the money together, amounting to something over $20,000, and kept it in a cedar robe under lock in his home; that he was living at that time with Ophelia Lewis Johnson, as man and wife, though they were not married; that Ophelia Lewis was separated but not divorced from her lawful husband Johnson; that plaintiff kept the keys to his home and to the cedar robe on the same key ring in his wallet which he carried in his pocket; that on July 8, 1954, when he returned from work he found the house locked; that he opened his wallet to get the house key and discovered for the first time that the keys to his house and to the cedar robe were missing; that upon gaining entrance to the house Ophelia and her two small children and their clothes were gone; that he forced open the door to the cedar robe and his money was also gone.

Additional evidence reveals a somewhat fantastic scheme of facts and circumstances of a well laid and adroitly executed plan of conspiracy by Ophelia and Davis in which they took plaintiff's money and appropriated it to their own use. Within a remarkably short period of time they were located in the State of Michigan ensconced under assumed names (Mamie Williams and Carl Williams), in an $8,000 home furnished with modern and expensive furniture all bought with plaintiff's money. It is apparent that only good detective work prevented the theft and escape from being a complete success.

While defendants' answers in all of these consolidated cases are in the form of general denials, the court in maintaining the exception of no cause of action accepted as true the well pleaded facts of plaintiff's petition as the law requires. We find, also, that the evidence fully supports plaintiff's allegations. Actually, in this court counsel for defendants do not dispute that the preëxisting debts of Sam Davis were paid with money stolen from this plaintiff with Davis' full knowledge of the theft. A further recitation of the undisputed evidence would be quite lengthy and under the circumstances would serve no useful purpose. Counsel for defendants rested their defense on the admitted good faith of all the defendants and upon common law jurisprudence, except for one Louisiana case which will be referred to hereinafter and Article 2138 of the Civil Code, LSA.

When seeking to resolve a dispute in Louisiana we must first look at the laws of this state to find if there are any provisions of Louisiana law determinative of the issue. If there is we are compelled to apply and follow that law before looking to foreign court decisions. There is positive Louisiana law applicable to the facts in these consolidated cases. It is Civil Code, Article 2139, LSA., which reads as follows:

> "If money, or other stolen property, be given in payment, the payment is not good, and the owner may recover the amount paid."

The language of this provision is so clear and unambiguous that we must be governed by it, unless

there has been some radical departure in the English translation from the original text which does not bring into English a clear meaning of the law. We find no such error. The slight discrepancy in translation referred to hereinafter does not actually alter the meaning and apparent intent from the original text. There is some temptation here to indulge in more extensive study and review of the expressions of early authorities and text writers which may be said to constitute the legal history and development of comparative provisions of our Civil Code. The brief of counsel for plaintiff contains a short summary which we deem sufficient for the purpose here presented and we copy that portion of the brief as follows:

> "In regard to this version of Article 2139 the Louisiana State Law Institute commented in West Louisiana Civil Code Annotated,
>
> "'History and Text of Former Codes RCC 1870, Art. 2139:
>
> "'(Error in English translation of French text—the words "If money, or other stolen property, be given in payment" should be "If the money or other articles with which payment is made are stolen".)'
>
> "The judgment of the Louisiana Law Institute in this regard is fortified by reference to the Projet of the Civil Code of 1825 as published in the Louisiana Legal Archives, Volume 1, page 282 in which the predecessor of Article 2139 is set out in its original correct form together with the original French text as follows:

"'If the money or other articles with which payment be made are stolen, the payment is not good, and the owner may recover the amount paid.'

"'Si l'argent ou les autres effets qui ont ete donnes en payement, ont ete voles, le payement n'est pas volable, et le proprietaire pourra recouvrer le montaut de ce qui a ete paye.'

"These two articles in the Projet were later assigned the number 2135 in the Code of 1825. In connection with the question of the correct version of this article, the law is settled in Louisiana that in case of conflict the French text shall prevail since the original draft was in French, the English being a translation of the French. (Sample v. Whitaker, 1931, 172 La. 722, 135 So. 38; Straus v. City of New Orleans, 1928, 166 La. 1035, 118 So. 125; Phelps v. Reinach, 1886, 38 La. Ann. 547. See also Dubuisson, the Codes of Louisiana, 25 Rep. of Louisiana Bar Association 143, 146 (1924)).

* * * * * * * *

"In regard to the preceding code article, the defendants have argued to the lower court that the two articles are in conflict. The preceding article, Article 2138 of the Revised Code of 1870, reads as follows:

"'If the debtor give a thing in payment of his obligation, which he has no right to deliver, it does not discharge his obligation, and the owner of the thing may reclaim it in the hands of the creditor, unless the obligation has been discharged by the payment of money, or the

delivery of some of those things which are consumed in the use, and the creditor has used them; in which case neither the money nor the things consumed can be reclaimed, and the payment will be good.'

"Article 2138 appeared only in a slightly different form in the Code of 1825, the Code of 1808 and the Code Napoleon of 1804. (See Article 2134 of Code of 1825; Article 138, Sec. 1, Chapter V, Title III, Book III of Code of 1808; Article 1238, Sec. 1, Chapter V, Title III, Book III of Code Napoleon of 1804.) Comments on this Article can be found in the French commentators, notably Pothier. (See Pothier, Treatise on the Law of Obligations, Vol. 1, Part 3, Chapter 1, Art. 3, Sec. 3, page 407 and Part 3, Chapter 1, Art. 1, number 459.)

"Art. 2138 contains three distinct principles, the third being an exception to the first two:

"First, the debtor who possesses without title cannot extinguish his obligation by giving in payment that which he has no right to deliver.

"Second, the true owner, 'le proprietaire', may reclaim what he owns in the hands of the creditor.

"Third, neither of the above principles apply if the payment was money or those things consumed in use and the creditor has used them.

"Plaintiff submits that this article, considered alone, may include all debtors who possess by any conceivable mode of acquisition lawful or unlawful. The debtor of 2138 may possess by

lease, pledge, as agent or overseer, as well as by trickery, theft, embezzlement or robbery, with violence or without, in bad or good faith. Article 2138 merely treats broadly of the debtor who 'gives a thing in payment * * * which he has no right to deliver.'

"However, in 1825, Article 2135 (later to become 2139 of the Revised Civil Code of 1870) was added 'as an amendment' to Article 138 of the Code of 1808. This article adds one narrow exception to the three principles of the foregoing article. It limits the type of acquisition by the debtor and thereby adds an exception to the third principle above stated. If the debtor pays with stolen money then the third principle does not apply and the first two do apply.

"Plaintiff submits that there is no conflict whatever between the two articles, one dealing with the possessor without title in the broadest sense and the other treating of a singular, narrow breed of debtor and possessor * * * the thief.

"That the redactors of the Projet of 1825 were concerned with stolen goods should not be a startling idea. The French Code Napoleon provides:

"'* * * the party who has lost anything, or from whom it has been stolen, may reclaim it within three years, computing from the day of the loss or robbery, against the party in whose hands he finds it; saving to the latter his remedy against the person from whom he obtained it.' French Civil Code Art. 2279.

"The Louisiana Code of 1808 similarly provides:

"'Art. 75. If a man has had a public and notorious possession of a moveable thing, during three years, in the presence of the person who claims the property of the thing, said person being a resident within the territory, is presumed to have known the circumstance of the possession and the property becomes vested in the possessor, unless the thing has been stolen.' Art. 75, Sec. III, Chapter III, Title XX, Book III, Code of 1808.

"This article has come down to us as the present day article 3506 of the Code of 1870.

"Further, the special rule applying to stolen goods can also be traced to the Spanish antecedents of the Code of 1825. It is established historical fact that: '* * * the Civil Code (of 1808) did not contain many and important provisions of the Spanish laws still in force,' at that time * * * and, as the Supreme Court held in Cottin v. Cottin, 5 Mart., O.S., 93, '* * * such parts of those laws only are repealed as are either contrary to, or incompatible with the provisions of the Code'. 'It thus appeared that a much greater portion of the Spanish laws remained in force than had been at first supposed.' (Preface by L. Moreau Lislet and Henry Carleton, to 'Las Siete Partidas' still in force in Louisiana in 1820.) One of the provisions of the Spanish laws in force after the adoption of the Code of 1808 and prior to the revision of 1825 was:

'If a man be forcibly deprived of a thing, he has his election to bring his action for it either against him who is in possession or the person who deprived him of it.' Partida Third, Title II, Law 30, Liset and Carletons Partidas, page 50.

"With such a background in the French and Spanish Codes, it is difficult to maintain that a special rule in regard to stolen money was an error—or an oversight—or 'in conflict' with a preceding article.

"Further, examination of an original print of the Projet of 1825, now in the possession of Tulane Law Library shows that the two articles were considered together to be an 'Amendment to Article 138' of the Code of 1808. Certainly this indicates a deliberate consideration of the exception as to 'stolen money' by Livingston, Derbigny and Lislet rather than a 'mistake' by the jurisconsults.

"The position of the defendants and the ruling of the Trial Judge would, if supported by this Court, completely invalidate Article 2139. Plaintiff submits that such a result would do violence not only to the plain and unambiguous text of this article but also would be contrary to both the jurisprudence and those code articles which deal with the legal interpretation of our statutes and laws. The entire Chapter 4 of the Code on the application and construction of laws is pertinent in the interpretation of Article 2139 and leaves little doubt but that the Courts of this State should not disregard the plain text of a law. Further the Supreme Court

in Chappuis v. Reggie [1952, 222 La. 35], 62 So.2d 92, at page 95 has held:

"'The uniform jurisprudence is to the effect that all statutory provisions are to be given effect whenever possible. LSA—Civil Code of Louisiana, Art. 17: State v. Texas Co., 205 La. 417, 17 So.2d 569; Town of Abbeville v. Police Jury, 207 La. 779, 22 So.2d 62; Melancon v. Mizell, 216 La. 711, 44 So.2d 826. If acts can be reconciled by a fair and reasonable interpretation, it must be done, since the repeal of a statute by implication is not favored and will not be indulged if there is any other reasonable construction. Town of Abbeville v. Police Jury, supra; State v. Standard Oil Co. of La., 188 La. 978, 1054, 178 So. 601; Mouledoux v. Maestri, 197 La. 525, 2 So.2d 11; State v. Jones, 220 La. 381, 56 So.2d 724. Moreover, where two acts relating to the same subject are passed at the same legislative session, there is a strong presumption against implied repeal and they are to be construed together, if possible, so as to reconcile them, giving effect to each. State v. Shushan, 206 La. 415, 19 So.2d 185; City of New Orleans v. Board of Supervisors of Elections, 216 La. 116, 43 So.2d 237. In the latter case this court quoted with approval the following language: "Where it is possible to do so, it is the duty of the courts, in the construction of statutes, to harmonize and reconcile laws * * *. These rules are particularly applicable to statutes passed at or about the same time or at the same session of the legislature, since it is not to be presumed that the same body of men would pass conflicting and incongruous acts." 216 La. at pages 144-145, 43 So.2d at page 246'."

Therefore, if there is any conflict of interpretation in Articles 2138 and 2139 the clear mandate contained in Article 2139 must prevail for the reasons shown in the above quotation from counsel's brief, and we are compelled to apply it.

It is the duty of the court to endeavor to give effect to both articles rather than to select one over the other and say only one of these two articles can be enforced. To that end there is at least a semblance of plausibility in the thought that the provisions of Article 2138 are dealing with things and money in kind. There could exist a situation where the lawful owner could actually identify the thing or the very identical pieces of money before such thing or money has been used or disposed of and his ownership could form the basis of a conservatory writ to prevent the use or disposition of the thing or money pending his suit to recover them. If such thing or money cannot be identified and arrested in kind before being consumed in use then there is no way to recover them in kind. Moreover, it is plausible to say that this article does not contemplate that the commission of a felony as such is the only cause which gives the debtor "no right to deliver" the thing or money in payment. On the other hand, article 2139 says squarely that if the money or other property given in payment be stolen then the owner may recover "the amount" paid. We must take the law as we find it. Article 2139 deals with recovery of the amount or value of the owner's claim rather than recovery of the identical thing or money in specie under Article 2138. Also, under Article 2138 there may be some

reason other than theft why the debtor has no right to use the thing or money of another to make payment of his own debt. Under Article 2139 if the debtor has stolen the money or property used in payment then the owner can recover the amount or value of it from the creditor.

Counsel for defendants cited such common law authorities as 36 Am.Jur. p. 460, Sec. 6; 40 Am.Jur. p. 747, Sec. 49; 114 A.L.R. 382; 58 C.J.S. Money Received § 13, p. 923, where it is reported that the weight of authority that money paid in due course of business for valuable consideration and received in good faith cannot be recovered by the person from whom the money was stolen by the debtor. Counsel does not refer to the law of any state that would be comparable to Article 2139 of our Code and such jurisprudence does not control in the light of a positive contrary provision of Louisiana law on the subject at issue. Counsel for defendants also rely heavily on the decision in First National Bank of Birmingham, Ala. v. Gibert & Clay, 123 La. 845, 49 So. 593, 25 L.R.A., N.S., 631. In that case defendants, Gibert and Clay, were cotton brokers. The bank paying teller, Chisholm, engaged in extensive gambling speculation in cotton futures bought on margin in the name of S. M. Webster who Chisholm said was a depositor in the bank and whom he claimed to represent as agent. It is not clear whether Webster was a fictitious name or that Chisholm did represent a person by that name. The court in that case said that made no difference. If there was no such person as Webster, and Chisholm had no withdrawals by Webster on his account, then Chisholm,

as paying teller, lifted $97,550 in cash in various smaller amounts at different times to pay his losses on current contract, and the bank sued for the amount, less $45,550 which Chisholm had returned. The basis of that suit was plaintiff's allegations that the defendants well knew that Chisholm was paid only a small salary of $2,000 a year and was in poor financial circumstances; that defendants induced him to make the purchases and knew that the money which he paid belonged to the bank. The court held that these allegations were not proven, and said the bank itself had not exercised due diligence. The authority in that decision for judgment against the plaintiff was an Illinois case in which the facts were closely similar where the Illinois court held that bad faith alone will defeat the right of the taker. Counsel for defendants here maintain that the First National Bank case decided by our Supreme Court in 1909 settles definitely and beyond question in this state the issue here presented. It requires only a cursory reading of that decision to find that, regardless of whose money it was, Chisholm did not use it to pay his own preëxisting debt but paid it out over the paying teller's counter at the bank to cover current gambling contracts, and further that the Court in that case did not discuss nor refer to and evidently did not consider the provisions of Article 2139 of our Civil Code LSA. Counsel for defendants contend that the plaintiff in the cases now before us placed Ophelia Johnson in position to steal the money by according to her the position of a wife with the right of access to the contents of the home. We cannot agree with that premise; for one thing, she did not have access to the

cedar robe. Of course, one might say that plaintiff should not have kept that money in cash. We cannot deny that he had a legal right to do so. A statement in one of plaintiff's exhibits refers to some disastrous experience the plaintiff at one time had when his bank deposit had been frozen, and that is given as the reason for not putting the money on deposit. He must have thought it safe in his home under lock with the key in his pocket. The money was stolen, and under the facts of these cases, we think he should recover from defendants the amounts of those payments made by Sam Davis.

Counsel for defendants also rely upon our negotiable instruments law on the theory that United States currency is nothing more nor less than negotiable instruments. Counsel assert that currency is the "essence of all negotiable instruments". We do not believe currency contains all the essence of a negotiable instrument under our law. We think United States currency is the object for which negotiable instruments issue. The very first requirement of our negotiable instrument law is that the instrument must be signed by the maker. The signatures on paper money are made by facsimile stamp, put there apparently by machinery. The adoption of the NIL has not in effect repealed Article 2139 of the Civil Code, LSA.

For these reasons the judgment in the case numbered and entitled first above is reversed and annulled.

Judgment is now rendered in favor of the plaintiff, Ernest Crawford and against the defendant, Alatex Con-

struction Service, Inc., in the full sum of $300 with legal interest from date of judicial demand and for all costs.

Reversed.

REGAN, J., absent.

JANVIER, Judge (concurring).

I agree fully with everything which appears in the controlling opinion and I would not have it believed that the offering of a concurrence evidences even the slightest disagreement.

I write this in the hope that there will be accentuated the fact that even under Civil Code, Article 2139; LSA, two things are essential if the owner of the thing or of the money is to recover it back. First, it is essential that the money or the thing must have come into the physical possession of the user illegally, and, second, that the money or the thing must have been used in an attempt to extinguish a preexisting obligation. If an agent or a bank teller or a store collector or anyone else into whose possession money has legally come uses it to retire a preexisting debt, or for any other purpose of his own Article 2139 has no application.

The second point which I would accentuate is that even Article 2139 does not authorize the recovery of

stolen money or things except where they are used in an effort to extinguish a preexisting debt. Both of these articles (articles 2138 and 2139) appear under Title IV, Chapter 5, which chapter treats "Of The Manner In Which Obligations May Be Extinguished." And it should be noted that both of these articles provide that under certain conditions the preexisting debt or obligation of the user is not extinguished. Under Article 2138 if the debtor attempts to extinguish his obligation by giving something which he has no right to give, "it does not discharge his obligation." Under Article 2139 if the debtor attempts to extinguish his obligation by the delivery of stolen money or other property, "the payment is not good."

Thus in either case the articles apply only where the money or the thing is used to extinguish a preexisting obligation. If a person walks into a store and purchases an article and gives in payment money which he has stolen, the store need not investigate to make certain that the money was not stolen. It is only where, as in the cases before us, the money was used in an attempt to extinguish a preexisting obligation that Article 2139 has application.

For these reasons I respectfully concur.

On rehearing

McBRIDE, Judge.

We granted a rehearing in this case, as well as in Crawford v. Community Finance Service, Inc., 120 So.2d 854, and Crawford v. Public Discount Co., Inc., 120 So.2d 855, the instant case having been consolidated with the two cases lastly mentioned because we were not satisfied with our original views that the defendant herein, who accepted the stolen money in good faith and without knowledge of its origin, was not protected by the theory that money and currency is highly negotiable and "has no earmarks," or by the terms of our own Negotiable Instruments Law (Act 64 of 1904), LSA-R.S.7:1 et seq.

We adhere to our previous findings of fact which are lucidly set forth in the original opinion and feel sure that we have placed the correct interpretation on the focal article of the LSA—Civil Code 2139.

In our original opinion we said:

> "Counsel for defendants also rely upon our negotiable instruments law on the theory that United States currency is nothing more nor less than negotiable instruments. Counsel assert that currency is the 'essence of all negotiable instruments.' We do not believe currency contains all the essence of a negotiable instrument under our law. We think United States currency is the object for which negotiable instruments

> issue. The very first requirement of our negotiable instrument law is that the instrument must be signed by the maker. The signatures on paper money are made by facsimile stamp, put there apparently by machinery. The adoption of the NIL has not in effect repealed Article 2139 of the Civil Code."

We are firmly convinced that United States currency and silver certificates are not such instruments as to come within the purview of the Negotiable Instruments Law, possibly not for the reason stated in our original opinion but for the reason that such are not commercial paper which this law was designed to cover.

Great stress was laid on the fact that the defendant accepted the money in question in due course of business, and that if we were to hold that the victimized owner of the money had a right to recover the amount from the innocent receiver, the verity of many business transactions would be destroyed and chaotic conditions would ensue.

This might be perfectly true, but regardless of the hardship visited upon defendant, which in good faith accepted the stolen money in payment of an antecedent debt, this court cannot overlook the provisions of LSA-C.C. art. 2139, which in unambiguous terms provides:

> "If money, or other stolen property, be given in payment, the payment is not good, and the owner may recover the amount paid."

Notwithstanding that it must be said that the defendant herein innocently received the stolen money from the thief, the owner thereof has his right to recover the amount from the defendant. To say otherwise would be to write out of the Civil Code entirely the above-quoted article.

We are of the firm opinion that we were correct in our original conclusions, and therefore our original decree is reinstated and made the final judgment of this court.

Original decree reinstated.

JANVIER, Judge (dissents).

I have not abandoned my view that Article 2139 of our LSA-Civil Code should be interpreted to mean that, where it can be shown that the identical money which is used in an effort to discharge a preexisting debt has been stolen—as distinguished from embezzled—the debt is not discharged and the money, if identified, may be recovered by the owner from the creditor who received it and that this interpretation should be placed on the article even though the creditor may have had no knowledge that the money was stolen. But I cannot now be persuaded that the adoption of the Negotiable Instruments Law (Act 64 of 1904) LSA-R.S. 7:1 et seq., did not to all intents and purposes repeal Article 2139.

There can be no doubt that, prior to the adoption of the Negotiable Instruments Law, money under the common law, the Law Merchant, was negotiable and that the purpose of the Negotiable Instruments Law was to Codify the Law Merchant so far as negotiable paper is concerned, and I feel that in adopting the Negotiable Instruments Law we, in Louisiana, have adopted the concept of full negotiability of money under the common law and that consequently an instrument which calls for payment in money is negotiable and that when it is discharged by the payment of money, which is also negotiable, this money is not subject to the claim of anyone else, when there is no knowledge of any defect which may exist in the title to the money as the result of theft.

I respectfully dissent.

APPENDIX B.

ERNEST CRAWFORD,

v.

COMMUNITY FINANCE SERVICE, INC.

(Consolidated with No. 21244 and No. 21246.)

No. 21245.

Court of Appeal of Louisiana.

Orleans.

Nov. 30, 1959.

On Rehearing June 8, 1960.

(Reported at 120 So.2d 854.)

JOHNSON, Judge pro tem.

For the reasons given in the consolidated case of Crawford v. Alatex Construction Service, Inc., 120 So.2d 845, in this Court, the judgment of the trial court is reversed and annulled, and there is now judgment herein in favor of plaintiff, Ernest Crawford and against Community Finance Service, Inc., in the full sum of $486.50, together with legal interest thereon from date of judicial demand until paid and for all costs in both courts.

Reversed.

REGAN, J., absent.

JANVIER, Judge (concurring).

For the written reasons assigned by me in Crawford v. Alatex Construction Service, Inc., La.App., 120 So.2d 852, I respectfully concur.

On Rehearing

McBRIDE, Judge.

For the reasons stated in our opinion handed down on rehearing this day in the case of Crawford v. Alatex Construction Service, Inc., 120 So.2d 845, it is ordered, adjudged and decreed that our original decree herein be reinstated and made the final judgment of this court.

Original decree reinstated.

JANVIER, Judge (dissents).

For the written reasons given in my dissenting opinion in Crawford v. Alatex Construction Services, Inc., 120 So.2d 852, on rehearing, I respectfully dissent.

APPENDIX C.

ERNEST CRAWFORD,

v.

PUBLIC DISCOUNT CO., INC.

(Consolidated with No. 21244 and No. 21245.)

No. 21246.

Court of Appeal of Louisiana.

Orleans.

Nov. 30, 1959.

On Rehearing June 8, 1960.

(Reported at 120 So.2d 855.)

JOHNSON, Judge pro tem.

For the reasons given in the consolidated case of Crawford v. Alatex Construction Service, Inc., 120 So.2d 845, in this Court, the judgment of the trial court is reversed and annulled, and there is now judgment herein in favor of plaintiff, Ernest Crawford and against Public Discount Co., Inc. in the full sum of $551 with legal interest from date of judicial demand until paid and for all costs in both courts.

Reversed.

REGAN, J., absent.

JANVIER, Judge (concurring).

For the written reasons assigned by me in Crawford v. Alatex Construction Service, Inc., La.App., 120 So.2d 852, I respectfully concur.

On Rehearing

McBRIDE, Judge.

For the reasons stated in our opinion handed down on rehearing this day in the case of Crawford v. Alatex Construction Service, Inc., 120 So.2d 845, it is ordered, adjudged and decreed that our original decree herein be reinstated and made the final judgment of this court.

Original decree reinstated.

APPENDIX D.

Denial of Writs by Supreme Court of Louisiana.

(1) Alatex Construction Service, Inc.

SUPREME COURT OF LOUISIANA

New Orleans.

BY HAWTHORNE, J: October 5, 1960.

No. 45,307.

ERNEST CRAWFORD,

v.

ALATEX CONSTRUCTION SERVICE, INC.

In re: Alatex Construction Service, Inc. applying for certiorari or writ of review to the Court of Appeal, Fourth Circuit, Parish of Orleans.

Writ denied.

The judgment of the Court of Appeal is correct.

/s/ FWH
/s/ JBH
/s/ EHMcC
/s/ WBH
/s/ RAV
/s/ LPG
/s/ HFT

APPENDIX D—Continued:

(2) Community Finance Service, Inc.

SUPREME COURT OF LOUISIANA.

New Orleans.

BY HAWTHORNE, J: October 5, 1960

No. 45,389.

ERNEST CRAWFORD,

v.

COMMUNITY FINANCE SERVICE, INC.

In Re: Community Finance Service, Inc. applying for certiorari or writ of review to the Court of Appeal, Fourth Circuit, Parish of Orleans.

Writ Denied.

The judgment of the Court of Appeal is correct.

/s/ FWH
/s/ JBH
/s/ EHMcC
/s/ WBH
/s/ RAV
/s/ LPG
/s/ HFT

APPENDIX D—Continued:

(3) Public Discount Company, Inc.

SUPREME COURT OF LOUISIANA.

New Orleans.

BY HAWTHORNE, J: October 5, 1960.

No. 45,308.

ERNEST CRAWFORD,

v.

PUBLIC DISCOUNT COMPANY, INC.

In Re: Public Discount Company, Inc. applying for certiorari or writ of review to the Court of Appeal, Fourth Circuit, Parish of Orleans.

Writ Denied.

The judgment of the Court of Appeal is correct.

/s/ FWH
/s/ JBH
/s/ EHMcC
/s/ WBH
/s/ RAV
/s/ LPG
/s/ HFT

APPENDIX E.

COURT OF APPEAL
FOURTH CIRCUIT
STATE OF LOUISIANA.

Nos. 21244, 21245, 21246, Consolidated.

ERNEST CRAWFORD,

vs.

ALATEX CONSTRUCTION SERVICE, INC., COMMUNITY FINANCE SERVICE, INC., PUBLIC DISCOUNT COMPANY, INC.

FILED: Feb. 28, 1961. /s/ M. J. KEENAN
CLERK

CERTIFICATE OF CONSIDERATION OF FEDERAL QUESTION.

I, the undersigned, GEORGE JANVIER, Presiding Judge of the Court of Appeal, Fourth Circuit (formerly Court of Appeal for the Parish of Orleans) hereby certify that Counsel for Defendants in the above, entitled and numbered proceedings in Briefs and in Oral Arguments before this Court on original Hearing and on Rehearing urged the Court to decree that Louisiana Civil Code Article 2139 is in conflict with a Statute of the United States, to-wit: 31 U.S.C.A. 462 (May 12, 1933, c25, Title III, § 43 (b) (1), 48 Stat. 52; June 5, 1933, c48, § 2, 48 Stat. 113) and that the Federal Statute should prevail.

That whereas the aforesaid Federal Question was presented to this Court and whereas neither the presentation of said Question nor the consideration of said Question by this Court was referred to in either the original Opinion or the Opinion on Rehearing reported at 120 So.(2) 845 and 120 So. (2) 852, respectively, the said Federal Question was reviewed and considered by this Court but Article 2139 was not found to be in conflict with the Federal Statute as urged by Counsel for Defendants.

New Orleans, Louisiana, February 28, 1961.

/s/ GEORGE JANVIER
(George Janvier)
Presiding Judge, Court of Appeal, Fourth Circuit, State of Louisiana

FILE COPY

Office-Supreme Court, U.S.
FILED
APR 8 1961
JAMES R. BROWNING, Clerk

Supreme Court of the United States

OCTOBER TERM, 1960

No. 825

ALATEX CONSTRUCTION SERVICE, INC.,
COMMUNITY FINANCE SERVICE, INC.,
PUBLIC DISCOUNT COMPANY, INC.,

Appellants,

versus

ERNEST CRAWFORD,

Appellee.

(CONSOLIDATED CASES)

On Appeal from the Court of Appeal, Fourth Circuit, State of Louisiana.

MOTION TO DISMISS AND BRIEF IN SUPPORT OF MOTION TO DISMISS.

BALDWIN, HASPEL, MOLONY,
RAINOLD AND MEYER,
CONRAD MEYER, III,
1108 Richards Building,
New Orleans 12, Louisiana,
Attorneys for Appellee,
Ernest Crawford.

LAWRENCE J. MOLONY,
Of Counsel:

HAUSER PRINTING CO., INC., NEW ORLEANS

INDEX

	PAGE
MOTION TO DISMISS	1
BRIEF IN SUPPORT OF MOTION TO DISMISS	2
I. STATEMENT OF THE CASE	2
II. THE FACTS	4
III. THE STATE LAW INVOLVED	4
IV. ARGUMENT	
1. The First Federal Question Presented	5
2. The Second Federal Question Presented	11
3. Appellants Failed to Raise any Federal Question in the Trial Court	16
V. CONCLUSION	18

AUTHORITIES CITED

Cases

American Surety Co. v. Baldwin (1932) 287 U.S. 156, 163	16
Bailey v. Anderson (1945) 326 U.S. 203, 206-7	17
City of New Orleans v. Plotkin (1944) 205 La. 490, 17 So. 2d 719	16
City of Shreveport v. Pedro (1930) 170 La. 351, 127 So. 865	16
First National Bank of Birmingham v. Gilbert & Clay (1909) 123 La. 845, 49 So. 593	3
Forbes v. State Council (1909) 216 U.S. 396, 398	16
Garmon v. San Diego Building Trades Council (1959) 359 U.S. 236	13
Garner v. Teamsters Union (1953) 346 U.S. 485	13
Herb v. Pitcairn (1945) 324 U.S. 117, 125	19

AUTHORITIES CITED—(Continued)

Cases—(Continued)

	PAGE
Herndon v. Georgia, 295 U.S. 441, 443 (1934)	16
The Legal Tender Cases, Knox v. Lee, and Parker v. Davis (1871) 12 Wall. 457 at 530	10
Lynch v. New York (1934) 293 U.S. 52, 54	14
Mississippi Valley Electric Co. v. Teamsters Local 270 (1955) 227 La. 37, 85 So. 2d 22	13
Mutual Life Insurance Co. v. McGrew (1902) 188 U.S. 291, 309	17
Radio Station WOW v. Johnson (1944) 326 U.S. 120, 128	16
Simmerman v. Nebraska (1885) 116 U.S. 54	16
Stembridge v. Georgia (1951) 343 U.S. 541	17, 18
Weber v. Anheuser Busch (1954) 348 U.S. 468	13

Statutes

United States

31 U.S.C. 462	6, 8, 9
The Legal Tender Acts, July 11, 1862, Chapter 142, 12 Stat. 532, February 25, 1862, Chapter 33, 12 Stat. 345 June 5, 1933, Chapter 48, 48 Stat. 113	9
28 U.S.C. 1257 (2)	18

Louisiana

Louisiana Revised Civil Code of 1870 (Act 97 of 1870), as amended, Articles 2138, 2139	5, 8
Louisiana Revised Statutes of 1950, Title 7, Section 1, *et seq.*	11, 13

Other

United States Constitution, Article 1, Section 8, Clause 5	10

Supreme Court of the United States

OCTOBER TERM, 1960

No. 825

ALATEX CONSTRUCTION SERVICE, INC., COMMUNITY FINANCE SERVICE, INC., PUBLIC DISCOUNT COMPANY, INC.,

Appellants,

versus

ERNEST CRAWFORD,

Appellee.

(CONSOLIDATED CASES)

On Appeal from the Court of Appeal, Fourth Circuit, State of Louisiana.

MOTION TO DISMISS.

Ernest Crawford, Appellee in the above entitled case, moves to dismiss on the grounds that:

(1) The federal question is so unsubstantial as not to warrant further argument,

(2) The federal question was not expressly passed upon by the courts of the State of Louisiana,

(3) The decision rests wholly on adequate non-federal grounds, without conflict with federal law, and the alleged federal question was not properly raised under Louisiana practice.

BRIEF IN SUPPORT OF MOTION TO DISMISS.

I.

STATEMENT OF THE CASE

Appellee filed three suits in the First City Court of the City of New Orleans seeking to recover $551.00 from Public Discount Company, Inc., $300.00 from Alatex Construction Service, Inc., and $486.50 from Community Finance Service, Inc., with interest and court costs from each.

The identical original petitions alleged that the sum of money claimed by Appellee was the amount received by the individual Appellant from one Sam Davis, being the amount in which he was in default upon pre-existing debt owed by him to Appellant.

Further, the petitions state that in each instance Davis "was without funds to make such payment; that the money with which the payment was made had been stolen from Appellee by Davis acting in concert and conspiracy with others."[1]

Appellants answered, admitting receiving the particular sums of money from Davis in payment of his debt to them, but denying Plaintiff-Appellee's claim. Each Appellant filed an exception of no cause or right of action.

The three cases were consolidated. The Trial Court referred the exceptions to the merits and the court heard all of the evidence and received all documents offered, including the depositions of the thieves, Sam Davis and Ophelia Johnson, in which they admitted paying Appellants with the money taken from Crawford.

[1] The original petitions contained a typographical error to the effect that money had been stolen by "defendant." This was amended at the trial by plaintiff to correctly reflect the allegation that the theft was by "Sam Davis acting in concert and conspiracy with others."

There was no issue as to the facts, as Appellee placed in the record all of the evidence. Appellants did not seek to contradict the evidence or raise any issue of fact, placing neither witnesses on the stand nor documents in the record.

Appellants below defended, originally on two legal grounds. They urged in the Trial Court that Appellee had no cause of action because the Louisiana Civil Code Article (2139) upon which his claim was based was in conflict with the Code article immediately preceding it (2138), and either 2139 should be ignored due to the conflict, or 2138 should govern. Secondly, Appellants relied upon a 1909 Louisiana case as controlling[2] and removing Appellee's cause of action. **There was no hint of any federal question raised in the Trial Court, although the case was heard on the merits, argued and briefed in detail by all parties.**

The Trial Judge subsequently maintained the exceptions of no cause of action and dismissed Appellee's suits without written opinion. Appellee appealed to the Court of Appeal of the Parish of Orleans (now the Court of Appeal, Fourth Circuit, State of Louisiana). In a decision at 120 So. 2d 845, the Court of Appeal unanimously reversed and rendered judgment in favor of Appellee. Since this case had been tried on the merits below and the record was complete, the court rendered final judgment for the amount claimed in each petition against each defendant. On rehearing, with one dissent, the court, with a brief opinion, reinstated the original judgment, at 120 So. 2d 852. Appellants sought writs of review in the Supreme Court of Louisiana but writs were unanimously denied on October 5, 1960, with the comment that, "The judgment of the Court of Appeal is correct."

[2] *First National Bank of Birmingham v. Gibert & Clay*, 123 La. 845, 49 So. 593, (1909).

II.

THE FACTS

Since the facts are not in dispute in this appeal, and have been concisely set out in the original opinion of the Court of Appeal,[3] Appellee will not burden the Court by recounting them in detail. In essence the facts were: Ernest Crawford, a Negro construction worker, was the victim of a theft of $20,120.00, his life's savings, by two thieves acting in conspiracy, Sam Davis and Ophelia Johnson. The thieves fled the State with the cash after Davis thoughtfully protected his credit in New Orleans by paying three of his creditors what he and Ophelia owed them with the stolen money. The thieves were apprehended by the F.B.I. in Michigan, where they had disposed of most of the money. They were tried and convicted, in the Federal District Court in New Orleans, of transporting stolen money interstate. They admitted, in a deposition that was introduced in the Trial Court in this case, that they paid their debts to Appellants with the stolen money.

III.

THE STATE LAW INVOLVED

The Court of Appeal stated as follows:

> "When seeking to resolve a dispute in Louisiana we must first look at the law of this State to find

[3] Although Appellants seem to infer in their statement of selected facts that there were questions of fact, the Court of Appeal noted: "We find, also, *that the evidence fully supports plaintiff's allegations.* Actually, in this Court, counsel for defendants do not dispute that the pre-existing debts of Sam Davis were paid with money stolen from this plaintiff with Davis' full knowledge of the theft. A further recitation of the undisputed evidence would be quite lengthy and under the circumstances would serve no useful purpose here. Counsel for defendants rested their defense on the admitted good faith of all the defendants and upon common law jurisprudence except one Louisiana case which will be referred to hereinafter and Article 2138 of the Civil Code, L.S.A." (Emphasis added) Original Decision of the Court of Appeal of Orleans Parish, by Judge Jess Johnson, page 22 of Appellant's Jurisdictional Statement.

if there are any provisions of Louisiana law determinative of the issue. If there is, we are compelled to apply and follow that law before looking to foreign court decisions. There is positive Louisiana law applicable to the facts in these consolidated cases. It is Civil Code Article 2139 which reads as follows:

> **'If money, or other stolen property, be given in payment, the payment is not good, and the owner may recover the amount paid.'**

"The language of this provision is so clear and unambiguous that we must be governed by it unless there has been some radical departure in the English translation from the original text which does not bring into English a clear meaning of the law. We find no such error.'

Original Decision of the Court of Appeal, page 22 of Appendix A of Appellants' Jurisdictional Statement.

IV.

ARGUMENT

1. *The First Federal Question Presented*

The first federal question Appellants claim this decision raises is:

> "(1) Whether the Court of Appeal for the Parish of Orleans, Louisiana, **failed to recognize that United States currency is legal tender for all debts, public and private,** with the result that the Court's decision impairs the use of United States Currency in derogation of the Laws of the United States."
>
> (Emphasis added) Appellants' Jurisdictional Statement, at page 6.

The gist of Appellants' argument is set out on page 11 of their jurisdictional statement:

> "The decisions allowing recovery on the part of

> Appellee herein are tantamount to a judicial pronouncement that United States currency was not in these cases legal tender in payment of all debts, public and private; and insofar as good faith receivers of the stolen money were concerned, the United States Federal Reserve Notes and Silver Certificates were not 'payable on demand to bearer'—all in contravention of the provisions of 31 U.S.C., Section 462."

The decision of the state court under attack here certainly does not **expressly** say what Appellants claim it does. The next consideration should be whether there is an implication that:

(1) United States currency is not legal tender,

(2) Good faith receivers of stolen money may not redeem that money for silver.

Considering both accusations together, the very facts of this case negate the Appellants' charges. The **particular currency** stolen, and later paid to the Appellants, **may have, since 1955, passed again and again, after that critical payment, into a thousand consecutive hands.** The Louisiana Code article and the state court decision are unconcerned with the past, present or future whereabouts of the stolen money, since there is no implication that the particular stolen bills must be given back to the true owner, but merely the provision that the true owner may recover "the amount" paid. **That it has been legal "to tender" and to redeem these bills since their printing and issuance is not in dispute.** However, in Louisiana, if stolen money is used by the thief in payment of pre-existing debts, then an obligation arises between creditor and true owner—an obligation that is wholly independent of and indifferent to the whereabouts or very existence of the original stolen bills.

Conversely, Louisiana Civil Code Article 2139, and the state court decision, do not provide or hold that federal currency, once having been the object of a theft, is henceforth unredeemable or **illegal to tender** for any debts. The Louisiana Code article and the decision make no provision in respect to the status of the stolen medium with which the critical payment is made. There is no attempt to taint the stolen object or to impair its subsequent negotiable value. The Louisiana Code article concerns itself solely with the obligations that arise subsequently between "le proprietaire" (the true owner), a creditor, and that singular, narrow breed of debtor and possessor, the thief. In this most narrow of circumstances,[4] the thief's debt is not existinguished (for the protection of his creditor) and the true owner may recover "the amount" from the creditor who received the stolen object. Hence, the alleged impairment of federal currency as legal tender or in its redeemable quality is not a valid issue here, as Article 2139 implies no contamination of the stolen object, whether it be money or property, granting only a cause of action to recover "the amount." This simple distinction is the short answer to Appellants' first federal question presented; however, despite the fact that this case has been argued three times and briefed at least six times, Appellants, like the Bellman in "The Hunting of the Snark."[5] persist in their factually incorrect argument that the Code article and the decision below allow recovery of the stolen money. In their final summation Appellants again urge:

> "The Court of Appeal for the Parish of Orleans has placed a restriction upon the free circulation and use of United States currency for the pay-

[4] This is the first reported case in which this article of the Louisiana Civil Code has ever been applied since its introduction into Louisiana law in 1825.

[5] The Bellman, it will be recalled, stated: "I have said it thrice; what I say three times is true."

ment of all debts, public and private, **by decreeing that Louisiana Civil Code Article 2139 permits a person from whom money is stolen to recover it in the hands of a good faith receiver.'**

(Emphasis added) Appellants' Jurisdictional Statement, at pages 16 and 17.

Yet the text of Article 2139 and the decision below show conclusively that neither pretends to allow a person from whom money is stolen **to recover "it"** in the hands of a good faith receiver, as Appellants erroneously urge. The article and the decision below merely give a cause of action for the **amount** involved. Such a cause of action does not bear upon the legality of tendering currency of the Federal Government in payment of debts or redeeming currency for silver. Still Appellants claim that Article 2139 and 31 U.S.C. 462 pose a conflict which is "apparent on its face and inherent in the decisions."[6] As to the alleged conflict, a study of the context in which the state statute appears will reveal that Article 2139 appears in Book III, Title IV, Chapter 5, Section 1, Paragraph 1 of the Louisiana Civil Code.[7] Book III is entitled "Of the Different Modes of Acquiring the Ownership of Things," Title IV is concerned with "Conventional Obligations," Chapter 5 is entitled "Of the Manner in Which Obligations May Be Extinguished," Section 1 deals with the subheading "Of Payment," and finally, Paragraph 1 is concerned with "Of Payment or Performance in General." It is plain from the position of the article in the Code and its context of surrounding Code articles that it deals only with obligations between individuals.

In contrast, a similar analysis of 31 U.S.C. 462 re-

[6] Page 8 of Appellants' Jurisdictional Statement.

[7] The Louisiana Civil Code is officially divided into "Books," "Titles," "Sections," "Paragraphs," and finally, "Articles."

veals that Title 31 deals generally with "Money and Finance."[8] Section 462 appears in Chapter 9, "Legal Tender" and the sections preceding and following 462 all concern themselves with establishing the monetary system of the Federal Government. From Section 463 it is apparent that the purpose and effect of the entire chapter, with its repeated command that the various types of paper money and coinage are all "legal tender," is to insure a uniform national currency of unchanging value, each piece of which is to be given the value indicated on its face without preference as to whether it be paper currency or hard coin. Those sections of the chapter relating to paper currency had their origin in "The Legal Tender Acts" of Congress of July 11 and February 25, 1862.[9] But for these Acts of Congress, as amended, pledging the credit of the Government of the United States, there would be no legal effect to a "tender" of payment with such instrinsically worthless paper. The original "Legal Tender Acts" caused a constitutional is-

---

[8] The chapter headings of this Title are: The National Budget and Audit System, Accounting and Auditing, Audit and Settlement of Accounts, The Treasurer, The Register, The Bureau of Engraving and Printing, Debts Due by, or to, the United States, Bureau of the Mint, Mints and Assay Offices, Coins, Coinage and Currency, Legal Tender, Public Moneys, Appropriations, The Public Debt, Credit and Currency Expansion, Financial Control of Government Corporations.

[9] The Legal Tender Acts, February 25, 1862, Chapter 33, 12 Stat. 345 and July 11, 1862, Chapter 142, 12 Stat. 532, as subsequently amended, finally evolved into the various sections of Title 31 U.S.C. By joint resolution on June 5, 1933, Chapter 48, 48 Stat. 113, Congress gave as the purpose and intent of the most recent amendment of what is known as the "legal tender laws":

> "Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and
>
> Whereas the existing emergency has disclosed that provisions of obligations which purport to give obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. Now, therefore, be it * * *"

sue to arise as to the right of the Government to establish paper currency under the grant of power from Article 1, Section 8, Clause 5, of the Constitution, "to coin money, regulate the value thereof * * *." The issue was specified in the "**Legal Tender Cases**" by Mr. Justice Strong to be:

> "* * * But in both cases the fundamental question, that which tests the validity of the legislation, is, can Congress constitutionally give to Treasury Notes the **character and quality of money?**"
>
> (Emphasis added) *Knox v. Lee*, and *Parker v. Davis* (Legal Tender Cases), 12 Wall. 457 at 530.

From the issue arising out of the original enactment of what is now 31 U.S.C. 462 *et seq.*, we learn that the purpose of the law itself was simply to give to paper currency the legal quality of money backed by the assets of the United States Treasury, and to make it as legal **to tender** paper currency in payment of debts as it would be to tender gold, silver or any other object with an instinsic value of its own.

Such intent and purpose is in no manner contrary to or in conflict with a state statute that creates a narrow cause of action or an obligation between two persons, the creditor of a thief and the thief's victim. Appellee submits that Judge Janvier of the Court of Appeal was correct in his Certificate of Consideration of Federal Question, wherein he stated that:

> "* * * the said Federal Question was reviewed and considered by this Court, but Article 2139 was not found to be in conflict with the Federal Statute, as urged by Counsel for Defendants."
>
> Appendix C, Appellants Jurisdictional Statement at page 48.

2. *The Second Federal Question Presented*

The second "question presented" by the appeal of Appellants offers a legal paradox.[10] It poses the thought that the state court reached incorrect conclusions of law in holding that Louisiana's Negotiable Instruments Law has no application to United States currency.

Despite the recognition by Appellants, at page 12 of their own brief, that, " * * * the status of Federal currency is a matter exclusively within the control of the Federal Government, and that the states are powerless to enact legislation limiting the exchangeability of currency," they contended in the appellate courts of Louisiana, and now urge in this Court, that United States currency is controlled by the State Negotiable Instruments Act. This strange contention evolved out of the Appellants' attempt to judicially repeal Article 2139 by raising a conflict between that Article and the State's Negotiable Instruments Law.[11] Having donned the protective armor of a holder in due course under the Negotiable Instruments Law of instruments (the original stolen bills?) which they never alleged that they still possessed, Appellants sought to convince the state court that the Code article conflicted with the protection given a good faith holder in due course under the Negotiable Instruments Law, and therefore was obsolete and repealed by implication by the later statute.

In replying, Appellee pointed out to the Court of Appeal that:

(1) Appellants' establishing themselves as having

[10] "(2) Whether the Court of Appeal for the Parish of Orleans, Louisiana, reached improper and incorrect conclusions of law in support of its finding that the Negotiable Instruments Law of the State of Louisiana has no application to United States currency, despite the clear language of 31 U.S.C. 462 importing the highest degree of negotiability to United States currency.

[11] Louisiana Revised Statutes, Title 7, Section 1 *et seq.*

been one-time "good faith holders in due course" of the money, or "instruments," was completely immaterial, since neither Appellants nor Appellee were concerned with the particular stolen bills, or "instruments." Neither party was suing on an instrument. The decision below did not question Appellants' (or anyone else's) right to demand gold or silver from the United States Treasury on presentation of these bills (if Appellants still possessed the stolen bills). Nor did the decision prevent Appellants from "renegotiating" those particular stolen bills to other persons (as they undoubtedly did, long before suit was even filed), or doing any of the things a "holder in due course" is entitled to do with instruments he holds. In fact, it is obvious that since 1955, when Appellants came into possession of the original stolen money, that those particular bills have probably passed out of the hands of the Appellants through thousands of hands and have been "negotiated" untold times. (This assumption, made in argument before the Court of Appeal, was undenied and unrebutted by Appellants). Therefore, for this reason, primarily, there was no conceivable conflict between Article 2139 and the State Negotiable Instruments Law. It is to be noted here that there is a complete absence of any semblance of a federal question raised by the alleged conflict between the two state statutes, as originally urged by Appellants and rebutted by Appellee.

(2) Secondly, Appellee urged to the state court that, in addition to the lack of conflict between the Negotiable Instruments Law and Article 2139, it was folly to argue that a state, through the medium of a "negotiable instruments law," could, in the most minute detail, regulate **federal currency.** Obviously, the Congress of the United States has preempted the field of regulation of its own currency to the complete exclusion of state regulation.

Garner v. Teamsters Union, 346 U.S. 485; *Mississippi Valley Electric Co. v. Teamsters Local 270*, 229 La. 37, 85 So. 2d 22; *Garmon v. San Diego Building Trades Counsel*, 359 U.S. 236; *Weber v. Anheuser Busch*, 348 U.S. 468.

(3) Finally, Appellee made an additional point, which was entirely superfluous to the disposal of Appellants' contention here, to the effect that it was entirely questionable whether or not federal currency was **the type** of a negotiable instrument intended to be governed by a "negotiable instruments law" of any state, since currency was really **the object for which commercial negotiable instruments issue.** As evidence of this, it was pointed out that the definition of the "instruments" regulated by the Louisiana Negotiable Instruments Law provided that such commercial paper, notes, etc., must be signed by the maker,[12] whereas United States currency bears only a facsimile signature. This distinction may have been completely superficial and, indeed, the entire point was superfluous; however, the state court mentioned it in their original decision, not by any means making the absurd holding that federal currency was non-negotiable, as Appellants urge, but merely **to illustrate that a state negotiable instruments law was never intended to apply to federal currency.**

However, shifting then from their original unsuccessful attempt to create a conflict between two state statutes, Appellants, on rehearing before the Court of Appeal, and now before this Court, seize upon this dictum in the state court's original decision, lift it out of context and exaggerate it into a substantial federal question that will rock the economy of the nation. However, the essential thrust of the court's opinion below was:

[12] Louisiana Revised Statutes, Title 7, Section 1(1).

> "On the other hand, Article 2139 says squarely that if the money or other property given in payment be stolen, then the owner may recover **'the amount'** paid. We must take the law as we find it. Article 2139 deals with **recovery of the amount or value of the owner's claim, rather than recovery of the identical thing or money in specie** under Article 2139."
>
> (Emphasis added) Court of Appeal's Original Decision of November 30, 1959; Page 30 of Appellants' Appendix A.

Following this, any decision as to whether or not federal currency was the type of instrument intended to be covered by a state negotiable instruments law was unnecessary to the determination of this cause. Mr. Chief Justice Hughes stated in 1934:

> "It is essential to the jurisdiction of the court in reviewing a decision of a court of a state that it must appear affirmatively from the record, not only that a federal question was presented to the highest court of a state having jurisdiction, but that its decision of the federal question was necessary to the determination of the cause, and that it was actually decided, or that the judgment rendered could not have been given without deciding it."
>
> *Lynch v. New York*, 293 U.S. 52, 54, (1934).

It is submitted that the observations in the original decision concerning the distinction as to signatures between the type of instrument covered by the State Negotiable Instruments Law and that circulated as currency by the Government were unnecessary and illustrative only. The court's basic holding was that Appellee's cause of action did not rest upon his right to regain possession of an instrument, but to collect "an amount" due. Such

holding was an adequate non-federal ground and did not bear upon the "negotiability" of federal currency in any manner, either explicitly or impliedly.

Therefore, the state court did not hold or imply, even in its original decision, that federal currency was anything less than negotiable, but merely sought to illustrate that money was not **the type** of instrument intended to be covered by a state negotiable instruments law. The conclusion of the state court on this point is undoubtedly correct. The illustration selected by the court in its original opinion as to signatures may or may not have been appropriate, but it was not the law of the case. This much is obvious from the opinion of the Court of Appeals on rehearing, where it made crystal clear that its original comments regarding the significance of a lack of a signature on currency were directed at distinguishing federal currency **as a type of instrument** from commercial paper insofar as the latter is defined in the State's Negotiable Instruments Law. The court, on rehearing, after repeating that portion of the original opinion concerning signatures which had been so vehemently protested by Appellants in reargument, commented:

> "We are firmly convinced that United States currency and silver certificates are not **such instruments** as to come within the purview of the Negotiable Instruments Law, **possibly not for the reason stated in our original opinion, but for the reason that such are not commercial paper which this law was designated to cover.**"
>
> (Emphasis added) Opinion of the Court of Appeal on Rehearing; Appellants' Jurisdictional Statement, Page 37, Appendix A.

Thus, the court never intended to reflect on the negotiability, *per se*, of federal currency due to its lack

of a genuine signature, and it took particular pains on rehearing to emphasize this, even to the extent of commenting that its previous comments on this point were "possibly" no longer held. It is equally clear that the essential thrust of the decision was to uphold the validity of Article 2139 of the Louisiana Civil Code, which deals with obligations between persons, and not the negotiability of instruments, federally issued or otherwise, and therefore, no federal question was even impliedly passed upon, or raised by the state decision.

3. *Appellants Failed to Raise Any Federal Question in the Trial Court*

The record is devoid of any evidence that a federal question was properly raised in accord with Louisiana practice[13] before the Trial Court. In fact, the Appellants admit, on page 7 of their Jurisdictional Statement that they did not raise it in the lower court. The conflict between Louisiana Civil Code Article 2139 and 31 U.S.C. 462 was first mentioned in the Court of Appeal. Such procedure has been held insufficient by the United States Supreme Court where it conflicts with state practice.[14] The certificate of the presiding judge of the Court of Appeal of Louisiana (an intermediate court), to the effect that the alleged federal question was raised, considered and not mentioned for the reason that there was no conflict, does not in itself correct the failure of the Appellants under Louisiana law to raise the issue properly in the Trial Court. Had the Court of Appeal believed that a true conflict between federal and state

[13] Appellants should have, by affirmative averment, specifically pleaded the alleged unconstitutionality of Article 2139. *City of Shreveport v. Pedro*, 170 La. 351, 127 So. 865 (1930); *City of New Orleans v. Plotkin*, 205 La. 499, 17 So. 2d 719 (1944).

[14] *Radio Station WOW v. Johnson*, 326 U.S. 120, 128 (1944); *Herndon v. Georgia*, 295 U.S. 441, 443 (1934); *American Surety Co. v. Baldwin*, 287 U.S. 156, 163 (1932); *Forbes v. State Council*, 216 U.S. 396, 398 (1909); *Simmerman v. Nebraska*, 116 U.S. 54 (1885).

law existed, they would still have had the opportunity to decide, on the adequate non-federal ground, that the issue was not properly raised in the Trial Court, and therefore waived by Appellants.

Where the highest state court is completely silent on the federal question, as in this case, and the federal question was not raised at the proper point in the state court proceeding, the Supreme Court has expressly declined to exercise jurisdiction. *Mutual Life Insurance Co. v. McGrew*, 188 U.S. 291, 309 (1902). The silence of the Court of Appeal and the Louisiana Supreme Court on the alleged federal question may have been due to the procedural deficiency, in addition to the court's belief, as expressed by Judge Janvier in his certificate, that there was, in fact, no federal question. The Supreme Court has previously assumed that silence on the part of a state court under these circumstances is due to the procedural deficiency. *Bailey v. Anderson*, 326 U.S. 203, 206-7 (1945).

The jurisprudence of the Supreme Court on this point has been consistent in refusing to review cases where the federal question was raised as an afterthought.

In *Stembridge v. Georgia*, 343 U.S. 541 (1951), the court said:

> "It is apparent from the record that the Supreme Court of Georgia took no action upon the question of federal constitutional rights raised for the first time on motion for rehearing in the Court of Appeal. This was in accord with its rule that constitutional questions must be raised in the trial court. * * *
>
> "At this stage, the Supreme Court of Georgia could have denied certiorari on adequate state

grounds. **Where the highest court of the state delivers no opinion** and it appears that the judgment **might** [emphasis supplied here by the Supreme Court] have rested upon a non-federal ground, this court will not take jurisdiction to review the judgment. [Citing eleven cases here.]

"The amending order of the Georgia Court of Appeals does not, in our view, change the posture of this case— it does not remove **the strong possibility** in the light of Georgia law that the Supreme Court of Georgia **might** have rested its order on a non-federal ground. **We are without jurisdiction when the question of the existence of an adequate state ground is debatable.**"

(Emphasis added) *Stembridge v. Georgia*, 343 U.S. 541, 547, 548 (1951).

Appellee submits that this case falls precisely within the rule of law announced above and therefore should be dismissed for the additional reason that the judgment of the Louisiana Supreme Court, refusing to grant the petition for certiorari, as well as the action of the Court of Appeal, might have rested upon the state ground of failure to raise timely the alleged federal question in the Trial Court.

V.

CONCLUSION

Title 28, Section 1257 (2), under which this appeal is brought, allows an appeal, "Where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

However, it is clear that the decision of the state court enforcing an obligation to pay an amount owed

under a state statute dealing solely with individual obligations had no effect, express or implied, upon federal currency or its "negotiability." Hence, the alleged federal question was not passed upon for the excellent reason that there was no conflict to pass upon, in addition to the failure of the Appellants to timely raise the issue. The state court's decision rested solely on state grounds which were not repugnant to any law of the United States. In the language of Justice Jackson, "This court from the time of its foundation has adhered to the principle that it will not review judgment of state courts that rest on adequate and independent grounds." [15]

[15] *Herb v. Pitcairn*, 324 U.S. 117, 125 (1945).

Wherefore, Appellee respectfully prays that this motion to dismiss this appeal be granted.

Respectfully submitted,

CONRAD MEYER, III,
BALDWIN, HASPEL, MOLONY,
RAINOLD AND MEYER,
1108 Richards Building,
New Orleans 12, Louisiana,
Attorneys for Appellee,
Ernest Crawford.

LAWRENCE J. MOLONY,
Of Counsel:

CERTIFICATE

I hereby certify that I have served the attorneys for the Appellants, Mr. Edwin F. Marx and Mr. William M. Lucas, Jr., of Dufour, St. Paul, Levy and Marx, 1006 National Bank of Commerce Building; Mr. Richard L. Voelker, Jr., of Owens, Levy & Voelker, 401 National Bank of Commerce Building; and Mr. Howard W. Lenfant of Lenfant and Villere, 910 Richards Building, all in New Orleans, Louisiana, with a copy of the motion to dismiss and a copy of the brief in support of said motion, by depositing same in the United States mail, postage paid, addressed to each of their offices on this ..... day of April, 1961.

.....

FILE COPY

Office Supreme Court, U.S.
FILED
APR 28 1961
JAMES R. BROWNING, Clerk

Supreme Court of the United States

OCTOBER TERM, 1960

No. 825

ALATEX CONSTRUCTION SERVICE, INC.
COMMUNITY FINANCE SERVICE, INC.
PUBLIC DISCOUNT COMPANY, INC.

Appellants

versus

ERNEST CRAWFORD

Appellee

(CONSOLIDATED CASES)

On Appeal from the Court of Appeal, Fourth Circuit, State of Louisiana

BRIEF IN OPPOSITION TO MOTION TO DISMISS

INDEX.

Page

REVIEW OF APPELLEE'S BRIEF 2

CONCLUSIONS 7

APPENDIX A
Louisiana Law Review; Vol. XXI; No. 2; February, 1961 8

CASES CITED

Charleston Federal S. & L. Assn. v. Alderson, 324 U.S. 182, 65 S.Ct. 624 (1945) 3

RULES OF THE UNITED STATES SUPREME COURT

Rule 16(3) 1

STATUTES CITED

31 U.S.C.A. 462 ..... 2, 6

LOUISIANA CIVIL CODE ARTICLES

Article 2139 ..... 2, 4

LAW REVIEW ARTICLES AND GENERAL AUTHORITIES

Black's Law Dictionary, Third Edition, verbo 'Legal tender, p. 1714 3

Louisiana Law Review; Vol. XXI; No. 2; February, 1961 ..... 4, 6, 8

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1960.

No. 825.

ALATEX CONSTRUCTION SERVICE, INC.
COMMUNITY FINANCE SERVICE, INC.
PUBLIC DISCOUNT COMPANY, INC.
Appellants

versus

ERNEST CRAWFORD
Appellee

(CONSOLIDATED CASES)

On Appeal from the Court of Appeal, Fourth Circuit, State of Louisiana.

BRIEF IN OPPOSITION TO MOTION TO DISMISS.

MAY IT PLEASE THE COURT:

This brief is filed in opposition to Defendant and Appellee's Motion to Dismiss and is filed pursuant to Rule 16 (3) of the Rules of this Honorable Court. Appellee's brief in support of Motion to Dismiss was received by Appellants herein on April 8, 1961.

REVIEW OF APPELLEE'S BRIEF.

Appellee argues that the Federal question was not properly raised under Louisiana practice in that the unconstitutionality of Louisiana Civil Code Article 2139 should have been specifically pleaded by affirmative averment (Appellee's Brief p. 16). In the first instance it is to be noted that the Civil Code Article is attacked, not on the ground that it is per se unconstitutional but rather that it is repugnant to the Statutes of the United States and that the decision of the highest State Court was in favor of the validity of the Codal Provision. The Codal Provision (adopted in 1825) in fact antedates the Federal Statute (31 USCA 462) which was adopted in 1933.

Further, from the certificate of the presiding Judge of the Court of Appeal, Fourth Circuit (Appendix E—Jurisdictional Statement) it is clear that "the said Federal question was reviewed and considered by this Court but Article 2139 was not found to be in conflict with the Federal Statute as urged by Counsel for Defendants". Whereas the Certificate of Consideration of Federal Question cannot in and of itself establish jurisdiction, the certificate coupled with the several briefs filed with the Court of Appeal both on original hearing and on rehearing establish beyond doubt that the issues here raised were also raised in the Appellate Courts of the State of Louisiana. Counsel would again note, as was pointed out in the Jurisdictional Statement, that the proceedings brought by Appellee were dismissed on exceptions at the trial court level and that no decision on the merits of the cases was handed down prior to the original opinion of the Court of Appeal Fourth Circuit before which Court the Federal

questions here presented were thoroughly argued and briefed.

Aside from the above considerations, this Honorable Court has held that it need not inquire how and when the question of the validity of a State Statute was raised when such question appears to have been actually considered and decided by the State Courts. In the case of *Charleston Federal S&L Ass'n v. Alderson, 324 U.S. 182, 65 S.Ct. 624 (1945)* this Honorable Court held:

> "Where it appears from the opinion of the state court of last resort that a state statute was drawn in question, as repugnant to the Constitution, and that the decision of the court was in favor of its validity, we have jurisdiction on appeal. For we need not inquire how and when the question of the validity of the statute was raised when such question appears to have been actually considered and decided by that court. Manhattan Life Ins. Co. v. Cohen, 234 U.S. 123, 134, 34 S.Ct. 874, 877, 58 L.Ed. 1245; Chicago, R. I. & P. R. Co. v. Perry, 259 U.S. 548, 551, 42 S.Ct. 524, 525, 66 L.Ed. 1056; Saltonstall v. Saltonstall, 276 U.S. 260, 267, 48 S.Ct. 225, 72 L.Ed. 565; Home Ins. Co. v. Dick, 281 U.S. 397, 407, 50 S.Ct. 338, 341, 74 L.Ed. 926, 74 A.L.R. 701; Nickey v. Mississippi, 292 U.S. 393, 394, 54 S.Ct. 743, 78 L.Ed. 1323; Whitfield v. Ohio, 297 U.S. 431, 435, 436, 56 S.Ct. 532, 533, 80 L.Ed. 778. * * *"

Appellee also argues that the Federal questions were not necessary to a determination of these consolidated cases. He submits that the Courts of Louisiana had before them for consideration simply a matter of interpreting a Louisiana Civil Code Article. The Appellee apparently concludes that the State Courts

could resolve this matter without adverting to the Federal Statute providing that United States currency shall be "legal tender for all debts public and private". It is respectfully submitted that such an argument is totally without merit. If such were the case, a State Court might in a given instance simply close its eyes to the existence of a conflicting Federal Statute and thus defeat Federal jurisdiction.

Appellee repeatedly stresses the point that Louisiana Civil Code Article 2139 does not permit the recovery of the exact money stolen but rather permits the person from whom it was stolen to recover "the amount paid". Appellee takes the position that the Federal Statute says nothing about payment but merely indicates that it is legal "to tender" United States currency and that the Statute does not concern itself beyond the mere tender. Thus he argues that when payment was made to Appellants with stolen currency the stolen currency was no less legal tender and Appellants were in fact obliged to receive it. He argues however, that under these particular circumstances where the stolen currency was used to pay pre-existing debts the person from whom the money was stolen is given a right by Louisiana La to recover over against the good faith receivers of the funds the amounts which they were paid.

The result of such a line of reasoning is to impair the free flow of United States Currency and to place the receiver of funds in a position of peril; for if the creditor is paid with stolen funds, he might at any time in the future be called upon to reimburse some third person who is a stranger to him despite the fact

that he himself was at all times in good faith. It is submitted that so narrow a construction of the United States Statute denominating currency as legal tender was never intended.

In Black's Law Dictionary, Third Edition, p. 1714 legal tender is defined as follows:

> "Legal Tender
>
> That kind of coin, money, or circulating medium which the law compels a creditor to accept *in payment* of his debt, when tendered by the debtor in the right amount." (emphasis supplied.)

The creditor upon receiving payment may close the account of the debtor or may cancel mortgages or liens or relinquish the notes evidencing the indebtedness, all to his detriment at some future date if he is paid in stolen currency. The harshness of such a result and its direct effect on the negotiability of United States currency would appear to be self-evident.

A thorough, comprehensive discussion of the problems herein presented both from the Common Law point of view and the Civil Law point of view is contained in the most recent edition of the Louisiana Law Review— Louisiana Law Review; Volume XXI; No. 2; February, 1961; p. 482. For the convenience and ready reference of the Court this Article is reproduced as Appendix A of this brief. It will be noted that the above referred to Article is a review of the case currently presented to this Honorable Court. The author concludes that an anomalous result is created in that paper money is made less negotiable than commercial paper which was

itself designed to substitute for paper money. The author further notes that the solution adopted in the *Crawford* cases allowing the owner to recover stolen money paid to a creditor differs from the result under both the French and Common Law.

Appellee argues that United States currency cannot be controlled by a State Negotiable Instruments Law since the United States Government has pre-empted the field of regulation of its own currency to the complete exclusion of state regulation. Appellants are in full agreement with Appellee that the Congress of the United States has in fact pre-empted the field of regulation of its own currency and it is this very point which constitutes the basis for this appeal. Appellants have consistently argued that 31 U.S.C. 462 imports the highest degree of negotiability to United States Currency and that the holding of the State Courts of Louisiana that United States currency is not a negotiable instrument pursuant to the negotiable Instruments Law of said State is in direct conflict with the Federal Statute. Reference is again made to Louisiana Law Review; Volume XXI; No. 2; February, 1961 at pp. 492-494; pp. 20-26, Appendix A, for a discussion of the negotiability of United States currency.

Finally Appellants would note that Appellee has referred to the Court of Appeal, Fourth Circuit as an intermediate court. While it is true that the Court of Appeal, Fourth Circuit is an intermediate court as to those cases in which writs of certiorari and review

are granted by the Louisiana Supreme Court, it is likewise true that it is the Court of last resort in those instances in which writs are denied. As pointed out at page 4 of the Jurisdictional Statement writs of certiorari and review were denied by the Supreme Court of the State of Louisiana on October 5, 1960 and thus the Court of Appeal, Fourth Circuit was in fact the State Court of last resort quoad the cases here presented.

CONCLUSIONS.

On the basis of the foregoing authorities as well as the authorities referred to in the Jurisdictional Statement, it is respectfully submitted that Motion to Dismiss filed on behalf of Appellee should be denied. It is further submitted that the conflict between the State Codal Provision and the Federal Statute presents a substantial Federal question within the Appellate Jurisdiction of this Honorable Court.

Respectfully submitted,

DUFOUR, ST. PAUL, LEVY & MARX,
EDWIN F. MARX,
WILLIAM M. LUCAS, JR.,
1006 National Bank of Commerce Building,
New Orleans 12, Louisiana,
Attorneys for Alatex Construction Service, Inc.,
OWENS, LEVY & VOELKER,
RICHARD L. VOELKER, JR.,
401 National Bank of Commerce Building,
New Orleans 12, Louisiana,
Attorneys for Public Discount Company, Inc.,
LENFANT & VILLERE,
HOWARD W. LENFANT,
910 Richards Building,
New Orleans 12, Louisiana,
Attorneys for Community Finance Service, Inc.

APPENDIX A.

(Louisiana Law Review; Volume XXI; No. 2; February, 1961; p. 482 et seq.)

Recovery of Stolen Paper Money Under the Louisiana Civil Code and the Negotiable Instruments Law.

Article 2138[1] of the Louisiana Civil Code provides that if a debtor give a thing in payment of his obligation, which he has no right to deliver, his obligation is not discharged and the owner may recover his goods, unless the obligation has been discharged by the payment of money or things which are consumed in use, and the creditor has used them; in which case neither can be reclaimed and the payment is good. Article 2139[2] provides that the owner of money or other stolen property, which has been given in payment, may recover the stolen article and the payment by the thief is not good.

In a recent case a Louisiana court of appeal declared that when stolen money is given by the thief in payment of a pre-existing debt the owner may recover the amount paid to the creditor.[3] In so holding, the court

---

[1] La. Civil Code art. 2138 (1870): "If the debtor give a thing in payment of his obligation, which he has no right to deliver, it does not discharge his obligation, and the owner of the thing given may reclaim it in the hands of the creditor, unless the obligation has been discharged by the payment of money, or the delivery of some of those things which are consumed in the use, and the creditor has used them; in which cases neither the money nor the things consumed can be reclaimed; and the payment will be good."

[2] *Id.* art. 2139: "If money, or other stolen property, be given in payment, the payment is not good, and the owner may recover the amount paid."

[3] Crawford v. Alatex Construction Service, Inc., 120 So.2d 845 (La. App. 1960).

declared that Article 2138 applies generally to money or things given in payment which the debtor has no right to deliver, and that Article 2139 qualifies and is not in conflict therewith, applying specifically to cases involving *stolen money*. Furthermore, the court declared that the adoption of the Negotiable Instruments Law did not repeal Article 2139 since money is not signed by the maker and therefore is not a negotiable instrument. On rehearing, the court re-affirmed its original interpretation of the Civil Code articles and, on the NIL point, stated that currency and silver certificates do not "come within the purview of the Negotiable Instruments Law, possibly not for the reasons stated in our original opinion but for the reason that such are not commercial paper which this law is designed to cover."[4]

The purpose of this Comment is three-fold: first, to compare similar problems and their solutions in other systems of law; second, to examine the Louisiana jurisprudence and pertinent Civil Code articles; and third, to examine briefly the relation of the NIL to the problem of stolen paper money used to pay a pre-existing debt.

For the purpose of this Comment, currency is defined as encompassing all forms of legal tender. It includes both paper money as well as metallic money or coin. Paper money refers to silver certificates and Federal Reserve notes commonly referred to as "greenbacks."[5]

---

[4] *Id.* at 853.

[5] For different forms of legal tender, see 31 U.S.C.A. §§452-463 (1954).

The Common Law.

Bona Fide Purchaser of Goods

The general rule at common law is that a third party who purchases goods from a vendor having legal or equitable title will prevail over the original owner of the goods, provided the third purchaser has given value for the goods and is in good faith.[6] The vendor is counted as having a legal or equitable title even though he has obtained a movable through fraud or vice of consent.[7] In this case, he has a voidable title which, upon transfer to the bona fide purchaser, becomes good.

However, when the bona fide purchaser obtains the article from a person who possesses no title or is without authority to sell, the original owner can recover the goods.[8] The vendor will have no title and no

---

[6] Snyder v. Lincoln, 153 Neb. 611, 45 N.W.2d 749 (1951); Kibler v. Yakima Finance Corp., 144 Wash. 604, 258 Pac. 490 (1927); Barthelmess v. Cavalier, 2 Cal. App.2d 477, 38 P.2d 484 (1934); Franklin, *Security of Acquisition and of Transaction: La Possession Vaut Titre and Bona Fide Purchase*, 6 Tul. L. Rev. 589, 594 (1932); 77 C.J.S. *Sales* §§288, 293-294 (1952); 92 C.J.S. *Vendor & Purchaser* § 320 (1955).

[7] Baehr v. Clark, 83 Iowa 313, 49 N.W. 840 (1891). At common law, in determining whether one who obtains a movable by fraud receives a voidable title or rather receives no title at all, a distinction is drawn in transactions which are *inter presents* and those which are *inter absentes*. In the former the defrauder obtains voidable title, whereas in the latter he obtains no title. 3 Corbin, Contracts § 602 (1951).

[8] Richmond v. Mississippi Mills, 52 Ark. 30, 11 S.W. 960 (1889); Callendar Savings Bank v. Loos, 142 Iowa 1, 120 N.W. 317 (1909); Cardone v. Consolidated Edison Co., 89 N.Y.S.2d 845 (Mun. Ct. 1949).

[9] Simpson v. Shaw, 51 Ariz. 293, 226 P.2d 557 (1951); Yates v. Russell, 20 Ariz. 338, 180 Pac. 910 (1919); Voss v. Chamberlain, 139 Iowa 569, 117 N.W. 269 (1908); Blue Grass Taxi Garage Co. v. Shepherd, 304 Ky. 390, 200 S.W.2d 936 (1941); Plummer v. Kingsley, 190 Ore. 378, 226 P.2d 297 (1951); Notes, 25 Tul. L. Rev. 146 (1950), 23 Tul. L. Rev. 420 (1949); 77 C.J.S. *Sales* § 295 (1955).

authority to sell in the following situations: (1) sale by a bailee or custodian;[10] (2) sale by a finder;[11] and (3) sale by one who has obtained the goods tortiously or feloniously.[12]

In the situation where a third party purchases goods from a vendor having legal or equitable title, the requirement that the purchase have been for *value* in order for the bona fide purchaser to prevail over the original owner has presented some difficulty.[13] Thus, where the third party purchaser takes goods in *payment of an antecedent debt*, opinion is somewhat divided as to whether the value requirement has been met. Originally, the overwhelming majority at common law denied protection to the third party against the original owner, refusing to count the cancellation of a pre-existing debt as a giving of value.[14] This position was supported upon the reasoning that by allowing the owner to reclaim his goods and by reinstating the creditor's claim against the debtor, the parties would be restored to their original positions. It would seem, however, that such a conclusion is not always justifiable, since often the creditor cannot be restored to his original position. In many cases the creditor might have lost an opportunity to collect, the debtor may have concealed his assets, or the creditor may have cancelled a lien or

---

[10] Goddard Grocer Co. v. Freedman, 127 S.W.2d 759 (Mo. App. 1939); General Motors Acceptance Corp. v. Baker, 291 N.Y.S. 1015, 161 Misc. 238 (1936).

[11] Stultz v. Miltenberger, 176 Ind. 561, 96 N.E. 581 (1911); 77 C.J.S. *Sales* § 295(d) (1955).

[12] Goddard Grocer Co. v. Freedman, 127 S.W.2d 759 (Mo. App. 1939); Effron v. Haile, 103 N.Y.S.2d 561 (1951).

[13] See Vold, Law of Sales 403 (1959); 55 Am. Jur. *Vendor & Purchaser* § 742 (1941); 77 C.J.S. *Sales* § 290 (1955).

[14] See note 12 *supra*.

mortgage against the debtor's property.[15] Since the enactment of the NIL and the Uniform Sales Act, which do consider a pre-existing debt as value,[16] there has been greater movement in the direction of affording protection to the creditor who receives goods in satisfaction of a pre-existing debt. Although it is still a minority view, some courts have considered the creditor in this situation as a bona fide purchaser for value.[17]

Bona Fide Acquirer of Currency

Where a bona fide third party acquires currency, or negotiable instruments from one who has no title, the common law reaches a result diametrically opposed to that reached in the case of chattels acquired by a third party. Although the acquirer of chattels is not protected against the original owner in such a situation,[18] the acquirer of currency or negotiable instruments is.[19] This protection, however, is limited to those cases

[15] In cases in which the creditor has changed his position to his detriment, so that he cannot be restored to his original position, more of the common law jurisdictions, although still in the minority, have tended to consider him as being a bona fide purchaser for value and afforded protection, distinguishing those cases in which he has not changed position. E.g., McCleery v. Wakefield, 76 Iowa 529, 41 N.W. 210 (1889); Farmers & M. State Bank v. Higgins, 149 Kan. 783, 89 P.2d 916 (1939); Grand Rapids National Bank v. Ford, 143 Mich. 402, 107 N.W. 76 (1906).

[16] Uniform Negotiable Instruments Law § 25; Uniform Sales Act § 76.

[17] Hallett v. Alexander, 50 Colo. 37, 144 Pac. 490 (1911); Sutton v. Ford, 144 Ga. 587, 87 S.E. 799 (1916); Rasmussen v. O. E. Lee & Co., 104 Mont. 278, 66 P.2d 119 (1937). See Vold, Law of Sales 403 (1950).

[18] See note 8 *supra*.

[19] People's National Bank v. Jones, 249 Ky. 468, 61 S.W.2d 17 (1933); Salley v. Terrill, 95 Me. 553, 50 Atl. 896 (1901); Miller v. Race, 1 Burr. 452 (1758). See Britton, Bills and Notes 339-43 (1943); 77 C.J.S. *Sales* § 292 (1955); 8 Am. Jur. *Bills & Notes* § 619 (1937).

where the currency passes *as currency*[20] as opposed to the sale of rare coins as collector's items.[21] It is from this English jurisprudence relative to coin and bank notes that the law merchant and, subsequently, the Negotiable Instrument Law was derived.

Summary

The common law rules relative to a bona fide purchaser may be summarized thusly: (1) a bona fide purchaser of goods from one who has legal or equitable title is protected against the original owner if he gives value, but a majority of the common law still holds that an antecedent debt does not constitute value; (2) a bona fide purchaser of goods from one who has no title cannot prevail against the owner; and (3) a bona fide purchaser of currency, passing as currency, is successful against the owner whether his vendor had title or not.

The French Law.

Generally: Goods or Money

The civilian counterpart of the bona fide purchaser doctrine is the doctrine of *la possession vaut titre* which protects one dealing with the possessor of corporeal

[20] In the early English case of Miller v. Race, 1 Burr. 452, 457 (1758), the court stated: "'It has been quaintly said, 'that the reason why money cannot be followed is, because it has no ear-mark:' but this is not true. The true reason is, upon account of the currency of it: it cannot be recovered after it has passed in currency. So, in case of money stolen, the true owner cannot recover it, after it has been paid away fairly and honestly upon a valuable bona fide consideration."

[21] United States v. Barnard, 72 F.Supp. 531 (W. D. Tenn. 1947); Chapman v. Cole, 12 Gray 141, 171 Am. Dec. 739 (1958); Moss v. Hancock, 2 Q.B. 111 (1899).

movables.[22] The doctrine as stated in the French Civil Code means in effect that in the case of movables, possession is equivalent to title.[23] *La possession vaut titre* was created to protect third parties who had received a movable from one to whom it had been confided.[24] Unlike the common law doctrine of bona fide purchaser, this theory, in general, protects the good faith acquirer of a chattel rather than the original owner.[25] In setting forth the distinction between the bona fide purchaser doctrine of common law and the doctrine of *la possession vaut titre*, it has been said that the common law doctrine terminates only technical equities in the original owner, while the doctrine of *la possession vaut titre* terminates any interest, except that of an owner of goods which were lost or stolen.[26]

Lost or Stolen Goods

Article 2279 of the French Civil Code setting forth the doctrine of *la possession vaut titre* excepts from its

---

[22] 1 Planiol, Civil Law Treatise (An English Translation by the Louisiana State Law Institute) no. 2476 (1959); Franklin, *Security of Acquisition and of Transaction: La Possession Vaut Titre and Bona Fide Purchase*, 6 Tul. L. Rev. 589, 595, 598 (1932); Note, 23 Tul. L. Rev. 420, 422 (1949).

[23] French Civil Code art. 2279 (Wright's transl. 1906): "With reference to movables, possession is considered equivalent to a title. But a person who has lost or who has been robbed of something can bring an action to recover it against any person he finds in possession thereof within three years of the date of the loss or robbery, and the latter has his right of action over against the person from whom he received it."

[24] See 1 Planiol, Civil Law Treatise (An English Translation by the Louisiana State Law Institute) no. 2476 (1959).

[25] See Franklin, *Security of Acquisition and of Transaction: La Possession Vaut Titre and Bona Fide Purchase*, 6 Tul. L. Rev. 589, 601 (1932).

[26] See 1 Planiol, Civil Law Treatise (An English Translation by the Louisiana State Law Institute) no. 2482 (1959); Franklin, *Security of Acquisition and of Transcation: La Possession Vaut Titre and Bona Fide Purchase*, 6 Tul. L.Rev. 589, 601 (1932).

operation goods which have been lost or stolen. Consequently, the owner of such goods may prevail over the third party who has acquired them.[27] In the case of lost or stolen goods, the French provide that the action for the revendication of the property must be brought against an innocent party within three years from the date upon which the goods were lost or stolen.[28] If, however, the goods remain in the possession of the thief or finder, the owner has thirty years in which to bring the action.[29] A modification of this rule occurs where the action is brought to recover lost or stolen goods from one who bought them at a fair, market, or public sale or from a merchant ordinarily dealing in such articles. In such cases, the French Code provides that the owner cannot demand the return of the goods except on reimbursing the third party the price he paid for the goods.[30]

Stolen Currency

The French commentators seem to be somewhat in conflict in resolving the problem raised by an acquirer

---

[27] See note 25 *supra*.

[28] It would seem that the French allow the vendee to be reimbursed to the extent of the purchase price paid without the necessity of possessing the goods for any specific period. The vendee would be entitled to reimbursement immediately without the requirement of possessing for three years as in Louisiana. See 1 Planiol, Civil Law Treatise (An English Translation by the Louisiana State Law Institute) nos. 2483-2486 (1959).

[29] *Id.* nos. 2483-2484.

[30] French Civil Code art. 2280 (Wright's transl. 1908): "If the person in actual possession of the thing stolen or lost bought it at a fair or market or at a public sale, or from a merchant selling similar articles, then the original owner cannot demand possession thereof except on condition of paying the person in possession the price he paid for it. A lessor who seeks to recover under Art. 2102 movables taken away without his consent, and which were bought under the circumstances mentioned above, must also repay the buyer the price he paid."

in good faith of stolen currency. Pothier states that where a payment is made in currency, by a person who is not the owner, the true owner may not recover the currency and the payment is valid if the money has been "consumed" by the creditor.[31] Pothier contends that it is the consumption which puts the money out of the creditor's possession, that marks the time at which the owner may no longer reclaim the stolen money.[32] Planiol considers in more detail the specific problems presented by movables which have been lost or stolen[33] and concludes that the French, like the common law, never allowed the revendication for the recovery of coin.[34] This protection is also afforded the third party possessor of bank notes and currency.[35]

The Louisiana Civil Code.

Louisiana has expressly rejected the French theory of *la possession vaut titre* in favor of the bona fide purchaser doctrine.[36] Consequently, the acquirer of goods from one who has no title is not protected in Louisiana to the etxent that he is in France. It has been suggested that the reason for this choice lies in the fact that during the development of the law in this

---

[31] 1 Pothier, A Treatise on the Law of Obligations or Contracts, no. 461 (Evans transl. 1853).

[32] *Ibid.*

[33] See 1 Planiol, Civil Law Treatise (An English Translation by the Louisiana State Law Institute) nos. 2492-2494 (1959); 2 *id.* no. 406.

[34] See 1 *id.* nos. 2488-2492; Franklin, *Security of Acquisition and of Transaction: La Possession Vaut Titre and Bona Fide Purchase*, 6 Tul. L. Rev. 589, 598 (1932).

[35] See 1 Paniol, Civil Law Treatise (An English Translation by the Louisiana State Law Institute) no. 2492 (1959); 2 *id.* nos. 401-406.

[36] Holton v. Hubbard, 49 La. Ann. 715, 22 So. 338 (1897); Holloway v. Ingersoll Co., 133 So. 819 (La. App. 1931).

area, Louisiana was primarily an agrarian society. In such a society, the need for security of one's ownership in goods was considered paramount. On the contrary, the French society was more advanced and the need for security of transactions in movables, without the danger of possible nullification by pre-existing equities, was paramount.[37]

Chattels in Payment of Antecedent Debt

Civil Code Article 2138 provides that where a debtor gives a thing, which he has no right to deliver, in payment of his obligation, the owner may recover the goods from the creditor unless the thing has been used or consumed. Presumably the language of the article "which he has no right to deliver" is broad enough to include the debtor who possesses by virtue of either a void or voidable title.[38] However, in regard to chattels obtained from a possessor who holds under a voidable title, Louisiana courts have adopted the solution of the common law and afforded protection to the purchaser in good faith and for value.[39] Although it might be

[37] See Franklin, *Security of Acquisition and of Transaction: La Possession Vaut Titre and Bona Fide Purchase*, 6 Tul. L. Rev. 589, 601 (1932).

[38] The Code article, in using the language "that which he has no right to deliver" presumably includes all degrees of stealing as contemplated by the common law. In the case of larceny and embezzlement, the thief gets no title, but in the case of false pretenses the thief is generally held to have voidable title. This distinction has been followed in Louisiana. Packard Florida Motors Co. v. Majone, 208 La. 1058, 24 So.2d 75 (1945) (larceny); Security Sales Co. v. Blackwell, 167 La. 667, 120 So. 45 (1929) (embezzlement); Lynn v. Lafitte, 177 So. 83 (La. App. 1937) (larceny).

[39] Thomas v. Mead, 8 Mart.(N.S.) 341 (La. 1829); Note, 17 Louisiana Law Review 854 (1957).

argued that the draftsmen of the Code intended the three-year prescription to be the sole measure of protection to be afforded to the good faith purchaser,[40] it is clear that the common law solution has been adopted.

Stolen Chattels or Currency Given in Payment of Antecedent Debt

Although Article 2138 sets forth the general rule applicable to goods transferred in satisfaction of an obligation by the debtor who held under either a void or voidable title, this article must be construed with Article 2139, which limits the application of Article 2138 in the area of *stolen* currency or goods given in payment. Article 2139 provides that the owner of stolen currency or goods may recover them from the creditor who has received them in payment of an obligation. As to *goods* which are held by one who has no title (lost or stolen goods) and which have passed into the hands of a good faith acquirer, the Civil Code in Article 3509 provides that all movables may be acquired by the prescription of ten years.[41] Although an owner may recover lost or stolen goods prior to the expiration of the prescriptive period of ten years, the jurisprudence has interpreted Civil Code Articles 3506 and

[40] La. Civil Code art. 3506 (1870) provides that if a person has possessed a movable in good faith and by a just title, for a period of three years, he acquires the ownership of the movable unless it was a thing which was lost or stolen.

[41] *Id.* art. 3509: "When the possessor or any movable whatever has possessed it for ten years without interruption, he shall acquire the ownership of it without being obliged to produce a title or to prove that he did not act in bad faith." See Note, 17 Louisiana Law Review 854 (1957).

3507[42] to mean that where the purchaser has acquired the stolen goods at public auction or from one in the habit of selling such things, he is entitled to a restitution of the price if he has possessed the goods for a period of three years.[43]

Since the French Civil Code contains no article which corresponds to Article 2139, the French authorities are of no aid in interpretation. A possible explanation of the presence of this article may be found in the fact that, at the time of its enactment, the common law was overwhelmingly to the effect that a pre-existing debt was not sufficient to constitute a giving of value as required by the bona fide purchaser doctrine,[44] and therefore allowed the owner to recover his goods. The refusal to protect the creditor, who had received stolen currency, under Article 2139 possibly reflects the common law thinking at this time. It is to be noted, however, that the trend of the statutory law today seems to be toward holding such to constitute value.[45]

It appears that only twice have the Louisiana appellate courts faced the question of recovery of stolen

[42] La. Civil Code art. 3507 (1870): "If however, the possessor of a thing stolen or lost bought it at a public auction or from a person in the habit of selling such things, the owner of the thing can not obtain restitution of it, without returning to the purchaser the price it cost him."

[43] Security Sales Co. v. Blackwell, 167 La. 667, 120 So. 45 (1929); Campbell v. Nichols, 11 Rob. 16 (La. 1845); Davis v. Hampton, 4 Mart. (N.S.) 288 (La. 1826).

[44] See Vold, Law of Sales 403 (1959); 55 Am. Jur. *Vendor & Purchaser* § 742 (1941); 77 C.J.S. *Sales* § 290 (1955).

[45] Uniform Sales Act § 76; Uniform Commercial Code § 1-201-(44); 46 Am. Jr. *Sales* § 467 (1941); 77 C.J.S. *Sales* § 290 (1955).

paper money transferred by one having no title.[46] However, in neither case was the paper money used to pay a pre-existing debt as contemplated in Article 2139. Thus, it appears that Article 2139 has played no part in prior reported decisions and was not urged or considered in the two cases which might possibly have presented an opportunity for its consideration.

Paper Money as a Negotiable Instrument at Common Law.

In order to determine whether money is a negotiable instrument within the purview of the NIL, a consideration of the history and purpose of the NIL is necessary. At an early date in England metallic coin passed from hand to hand free of prior equities because of its own special nature.[47] Bank notes were negotiable and apparently passed free from equities sixty years before

[46] In the case of First National Bank of Birmingham, Ala. v. Gibert & Clay, 123 La. 845, 49 So. 593 (1909), the court denied recovery of paper money used by a bank teller in speculating on the stock market. The court quoted language of an Illinois case which was almost identical to the instant case and followed the established doctrine of the common law relative to stolen paper money in denying recovery. The case of Steamboat Carrie Converse & Owners v. Jacob Feitig, 27 La. Ann. 117 (1875), which was tried prior to the enactment of the NIL in Louisiana, also denied recovery. In this case the plaintiff sought to recover paper money in the possession of a gambler. The gambler had acquired possession of the paper money from the plaintiff's employee who had embezzled it from the plaintiff. The Court stated that this was not a case in which the plaintiff was seeking to recover a specific piece of property which was in possession of defendant and dismissed the petition as showing no cause of action. By the court's language, it would seem that it was applying the bona fide purchaser doctrine and that had the plaintiff been suing for the recovery of *property* he would have been successful, for under the bona fide purchaser doctrine an embezzler obtains no title and can pass none. However, in the case of *stolen paper money* (which includes embezzlement and larceny) the common law denied recovery.

[47] Britton, Bills and Notes 10, 14 (1943).

the doctrine of transferability free from equities was judicially established in 1758.[48] In that decision, it is evident that bank notes were intended as a substitute for paper money, since they were given all the attributes of paper money, i.e., its currency and transferability free from equities.[49] By the close of the eighteenth century, the English courts had established the basic principles of the law of negotiable instruments. This body of law was known as the law merchant and it was but a short step to its codification and acceptance in 1882 in England in the Bills of Exchange Act.[50] In the United States this English act served as the basis for the acts adopted by the several states around the turn of the century.[51] Louisiana adopted the NIL in 1904.[52]

Under the NIL the attributes of negotiability appear to be fairly well settled. To be negotiable, an instrument must (1) be in writing and signed by the maker or drawer; (2) contain an unconditional promise or order to pay a sum certain in money; (3) be payable on demand; and (4) be payable to bearer or to order.[53] It

[48] Miller v. Race, 1 Burr. 452 (1758).

[49] In the *Miller* case, when it was contended that bank notes were mere chattels, the court said: "But the whole fallacy of the argument turns upon the comparing bank notes to what they do not resemble, and what they ought not to be compared to, viz. to goods or to securities, or documents for debts. Now they are not goods, not securities, nor documents for debts, nor are so esteemed: but are treated as money, as cash, in the ordinary course and transaction of business, by the general consent of mankind; which gives them the credit and currency of money, to all intents and purposes. They are as much money, as guineas themselves are; or any other current coin, that is used in common payments as money or cash." *Id.* at 457.

[50] See Britton, Bills and Notes 14-22 (1943); 7 Am. Jur. *Bills & Notes* § 22 (1937).

[51] See note 49 *supra*.

[52] La. Acts 1904, No. 61.

[53] Uniform Negotiable Instruments Law, § 1.

would seem that paper money, i.e., silver certificates of the United States Treasury and Federal Reserve bank notes, meets all the requisites of negotiability. Each such instrument contains a promise to pay to the bearer thereof, on demand, a sum certain in silver dollars. The issuance of paper money by the Federal Government is not an attempt to coin money out of valueless material, but it is rather a pledge of the national credit and constitutes a promise by the government to pay in silver dollars the amount represented by the certificate.[54] A California appellate court, in resolving the ownership of stolen fifty dollar bills, applied the provisions of the NIL and stated that United States treasury notes are negotiable instruments of the highest character.[55] As to the requirement that it must be in writing and signed by the maker or drawer, Britton, in his *Handbook of the Law of Bills and Notes*,[56] states that the "signature may be in one's handwriting, or printed, engraved, lithographed or photographed so long as they are adopted as the signatures of the signers."[57]

---

[54] United States v. Ballard, 14 Wall. 457 (U.S. 1872); 36 Am. Jur. *Money* § 17 (1941).

[55] Stiller v. Rogers, 159 P.2d 457 (Cal. App. 1945). *Accord*, Frazer v. D'Invilliers, 2 Pa. 200, 44 Am. Dec. 190 (1846); 10 C.J.S. *Bills & Notes* § 23 (1955). The only indication to the contrary which was discovered was the case of Stone & Webster Engineering Corp. v. Hamilton National Bank, 199 F.2d 127 (6th Cir. 1952). In that case, a district court had held that paper money is not a negotiable instrument within the purview of the NIL. However, the appeal court held that since no "value" had been given as contemplated by the NIL, it was immaterial whether money be deemed to come within the purview of the NIL. A vigorous dissent urged that paper money should be considered as a negotiable instrument within the purview of the NIL.

[56] Britton, Bills and Notes 33 (1943).

[57] See Uniform Negotiable Instruments Law § 191; Brannan, Negotiable Instruments Law 599, 1341 (Beutel's 7th ed. 1948).

It should be noted that in considering whether paper money is a negotiable instrument within the purview of the NIL at common law, little aid is derived from the jurisprudence because the common law is not faced with the necessity of making such a determination, since the owner is denied recovery under either the common law or the NIL. However, it would seem to this writer that at common law, paper money is considered a negotiable instrument within the purview of the NIL in light of the following: (1) at common law the creditor who received money in payment is always protected against prior equities;[58] (2) the law merchant, and later its codification in the form of the NIL, was designed to impart to commercial paper the same freedom from prior equities as existed for paper money in order that commercial paper might *substitute* for paper money;[59] and (3) paper money seemingly meets all the prerequisites of a negotiable instrument as set forth in the NIL.[60]

Paper Money as Negotiable Instrument in Louisiana.

Although in the writer's opinion it seems that paper money is counted as coming within the purview of the NIL at common law, the fact that Louisiana has adopted the NIL does not necessarily mean that paper money is to be counted as a negotiable instrument in this state. By virtue of Article 2139, money in Louisiana was actually made less negotiable than paper money in the

[58] See note 18 *supra*.
[59] Miller v. Race, 1 Burr. 452 (1758); Britton, Bills and Notes 339-43 (1943); 8 Am. Jur. *Bills & Notes* § 619 (1937).
[60] Uniform Negotiable Instruments Law § 1: Stiller v. Rogers, 159 P.2d 457 (Cal.App. 1945).

common law since the creditor, under an application of Article 2139, is not protected from prior equities as under the common law. Furthermore, in the recent court of appeal case of *Crawford v. Alatex Construction Service, Inc.*,[61] the court held that paper money is not to be considered a negotiable instrument in Louisiana, and that therefore the provisions of Article 2139, operate to allow the original owner to recover stolen currency from a creditor of the thief to whom it had been paid. As pointed out in the introduction to this Comment, the court's reasoning in support of the statement that paper money does not come within the purview of the NIL in Louisiana is not entirely clear. However, there is a strong inclination that the basis for the statement was the fact that paper money is not signed by the maker.[62] This reasoning would not seem to be sound, in the light of the fact that in R.S. 7:191,[63] Louisiana has adopted the provision of the NIL which states that the terms "written" includes "printed" and "writing" includes "print,"[64] and in light of the seeming intention of the common law to include paper money within the purview of the NIL.

---

[61] 120 So.2d 845 (La. App. 1960).

[62] *Id.* at 852: "We do not believe currency contains all the essence of a negotiable instrument under our law. We think United States currency is the object for which negotiable instruments issue. The very first requirement of our negotiable instrument law is that the instruments must be signed by the maker. The signatures on paper money are made by facsimile stamp, put there apparently by machinery." *But see id.* at 853 (on rehearing): "We are firmly convinced that United States currency and silver certificates are not such instruments as to come within the purview of the Negotiable Instruments Law, possibly not for the reason stated in our original opinion but for the reason that such are not commercial paper which this law was designed to cover."

[63] La. R.S. 7:191 (1950).

[64] Fadacl v. Rideau, 13 La. App. 551, 128 So. 193 (1930).

However, even if it be conceded that the common law would not count paper money as falling within the purview of the NIL, the chief objection to the *Crawford* case is that it creates the anomalous result in Louisiana of affording greater security to commercial paper, which was originated to substitute for paper money, than to money itself.

One theory which could be used to avoid such a result would be to consider paper money as being a negotiable instrument within the purview of the NIL at common law, and since Louisiana has enacted the NIL, probably Louisiana attempted to adopt the same negotiability to paper money as is true at common law. The adoption of this theory would mean that the enactment of the NIL repeals Article 2139, since that article reaches a result contrary to that proposed in the NIL. Even if it be conceded that the legislature in adopting the NIL did not intend that paper money should come within its purview, it is doubtful that the intention was to create the result of affording greater protection to commercial paper than to paper money. Therefore, even if it be said that Article 2139 was not repealed out of an intention on the part of the legislature to include paper money within the purview of the NIL, nevertheless, an implied repeal of this article would have been effected.[65]

[65] In light of the anomalous result produced by the decision in Crawford v. Alatex Construction Service, Inc., 120 So.2d 845 (La. App. 1960), it would seem that it is unnecessary to consider the question of direct repeal of Article 2139. However, it is interesting to note that Louisiana did not adopt the clause which repeals all prior legislation in conflict therewith as was adopted by the Committee on Uniform Laws. See La. Acts 1904, No. 64, which omitted Section 197 of the Uniform Code.

If a determination of the ownership of stolen paper money is to be made under the NIL, the outcome would seem to be fairly clear. Under the NIL, the term "holder in due course" is used as an equivalent for the expression "bona fide holder for value without notice." The holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves.[66] As to the question of value, the NIL, in Section 25, provides that "value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value."[67]

Conclusion.

Although the court's interpretation of Articles 2138 and 2139 in the *Crawford* case would seem equitable standing alone, an anomaly is thereby created in that paper money is made less negotiable than commercial paper which was designed to *substitute* for paper money.[68] It is submitted that the court's failure to consider the intent and purpose of the passage of the NIL, in which the legislature evidenced the intent that negotiable instruments should pass free from prior equities, was unfor-

---

[66] La. R.S. 7:52-57 (1950).

[67] *Id.* 7:25. In Exchange National Bank v. Longino, 168 La. 824, 123 So. 587 (1929), there was a note given in lieu of a past due note of an insolvent corporation. The note held to be supported by full consideration under Section 25 of the NIL.

[68] Although the applicability of Louisiana Civil Code art. 2139 to other forms of currency is not within the scope of this Comment, it would seem that the reasoning is similar. It is not contended that other forms of currency such as coin is to be counted as a negotiable instrument so as to come within the purview of the NIL but rather that the adoption of the NIL impliedly repeals Article 2139 as applied to all forms of currency.

tunate in light of the ever-increasing need of commerce for the extension of credit and the corresponding demand of creditors for maximum security.[69] It would seem that any purpose once served by Article 2139 has been abandoned through the adoption of the NIL. Furthermore, the solution adopted in the *Crawford* case of allowing the owner to recover stolen money paid to a creditor differs from the result under both the French and common law.

Gerald L. Walter, Jr.

---

[69] For a brief criticism of the *Crawford* case, published after completion of this Comment, see 2 BCI & CL Rev. 159 (1960).